COURT, U. S.
FILED
JAN 23 1974
MICHAEL RODAK, JR., CLERK

APPENDIX

In The Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-466

WILLIAM E. ARNOLD COMPANY,
a Florida corporation,

Petitioner,

v.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH JOHN H. SEA, BUSINESS REPRESENTATIVE THEREOF; AND CARPENTERS LOCAL UNION NO. 627, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH EARL S. HUFF, ASSISTANT BUSINESS REPRESENTATIVE THEREOF,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

APPENDIX

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INDEX OF RELEVANT DOCKET ENTRIES

VOLUME ONE:

I. Petition for Writ of Certiorari filed June 5, 1971.

II. Jurisdictional Brief filed by attorneys for petitioners filed June 5, 1971.

III. Petitioners' Main Brief filed August 20, 1971.

IV. William E. Arnold Company's Main Brief in Opposition, etc. filed September 7, 1971.

V. Order of Supreme Court of Florida allowing certiorari entered July 29, 1971.

VI. REVISED TRANSCRIPT OF RECORD filed in the Supreme Court of Florida September 10, 1971. (The opinion of the Florida District Court of Appeal is reprinted in the Appendix to the Petition for Writ of Certiorari at p. 3a.)

VII. Order of Supreme Court of Florida granting respondent's motion to supplement the record with attached record entered October 17, 1972.

VIII. Order of Supreme Court of Florida granting respondent's motion to supplement the record with attached record entered November 29, 1972.

VOLUME TWO:

IX. Opinion of the Supreme Court of Florida filed April 18, 1973. (Reprinted in the Appendix to the Petition for Writ of Certiorari at p. 8a.)

X. Petition for Rehearing filed by attorneys for William E. Arnold Company filed on May 2, 1973.

XI. Petitioner's Reply to Respondent's Petition for Rehearing filed May 21, 1973.

XII. Motion of Northeastern Florida Chapter, The Associated General Contractors of America, Inc. for Leave to Participate as Amicus Curiae with brief attached filed May 3, 1973.

XIII. Petition for Rehearing and Motion to File Brief as Amicus Curiae Florida West Coast Chapter, Associated General Contractors of America, Inc., et al. filed May 3, 1973.

XIV. Brief on Rehearing of Amici Curiae The Miami Herald, a Division of Knight Newspapers, Inc. and Florida Publishing Company filed May 7, 1973.

XV. Joint Amicus Curiae Brief in Support of Petition for Rehearing filed by The Tribune Company and the Florida East Coast Chapter of the Associated General Contractors of America, Inc. filed May 7, 1973.

XVI. Brief Amicus Curiae on behalf of the South Florida Chapter of the Associated General Contractors of America, Inc., Associated Sheet Metal Contractors and The South Florida Poured Roof Deck Association filed May 14, 1973.

XVII. Florida State Chamber of Commerce Amicus Curiae Brief in Support of Petition for Rehearing filed May 30, 1973.

XVIII. Brief in Florida Sugar Cane League, Inc. in Support of Petition for Rehearing filed June 13, 1973.

XIX. Order of the Supreme Court of Florida denying petition for rehearing entered July 20, 1973. (Reprinted in the Appendix to the Petition for Writ of Certiorari at p. 15a.)

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, a labor organization, and as an unincorporated association, by and through JOHN H. SEA, business representative thereof; and CARPENTERS LOCAL UNION NO. 627, a labor organization, and as an unincorporated association, by and through EARL S. HUFF, assistant business representative thereof,

Petitioners,

vs.

THE HONORABLE ROGER J. WAYBRIGHT, as Circuit Judge of the Fourth Judicial Circuit, in and for Duval County, Florida,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE STATE OF FLORIDA:

The Petitioners, Carpenters District Council of Jacksonville and Vicinity, and the Carpenters Local Union No. 627, petition this Honorable Court for a Writ of Certiorari to the District Court of Appeal of Florida, First District, to review that certain order entered by the lower Court, dated the 10th day of May, 1971, denying petitioners' Suggestion for a Writ of Prohibition, and in support thereof would show unto this Court the following:

1. Your petitioners submit that the order complained of

herein is in direct conflict with the decisions of this Honorable Court rendered in the cases of *Scherer and Sons, Inc. v. International Ladies' Garment Workers Union*, 142 So.2d 290 (Fla 1962) and *Sheetmetal Workers' International Association v. Florida Heat and Power, Inc.*, 230 So 2d 154 (Fla. 1970).

2. Copies of the Order below of record are filed simultaneous herewith.

3. The following are the facts of this case:

The proceedings in this cause were initiated when the William E. Arnold Company filed a Complaint for Injunction against the petitioners herein, a hearing was held before the Honorable Roger J. Waybright, and a temporary restraining order was issued, all on April 23, 1971. The Complaint alleged a work stoppage by the petitioners due to a jurisdictional dispute between labor organizations, and further alleged this was a violation of the collective bargaining agreement under which the petitioners were bound.

The petitioners then filed a Suggestion for a Writ of Prohibition in the District Court of Appeal, First District, suggesting that the lower Court was without jurisdiction in said case. The District Court held that although the conduct alleged in the Complaint was an unfair labor practice under Title 29, Labor, § 158 (b)(4)(i)(D), the State Courts had jurisdiction over the cause because of the violation of the bargaining agreement.

4. The order of the District Court, dated May 10, 1971, is in direct conflict with the Court's holding in the *Scherer* case that a state may not assert its injunctive processes against "an unfair labor practice" defined by federal statutes, due to exclusive federal jurisdiction.

5. The order of the District Court, dated May 10, 1971, is in direct conflict with this Court's holding in the *Sheetmetal Workers'* case that state jurisdiction, and the use of ex parte injunctions, should be limited to the three distinct areas where their use has already been established: *Where it is absolutely clear no federally protected or prohibited activities are involved,* where there is violence, and where there is an affront to the State's right to work policy.

6. The Order of the District Court, dated May 10, 1971, is in direct conflict with the *Scherer* and *Sheetmetal Workers* cases in that it holds that the State Court may make the initial determination of jurisdiction.

7. The Order of the District Court, dated May 10, 1971, is in conflict with the sense of the two above cases, in that it amounts to a ruling that if an unfair labor practice as defined by federal law is also a violation of a collective bargaining agreement, the State Court has jurisdiction to enjoin the conduct.

WHEREFORE, your petitioners pray that this Honorable Court issue its Writ of Certiorari to the District Court of Appeal, First District, to review the abovesaid Order.

Respectfully submitted:

MAHON & MAHON

BY /s/ Lacy Mahon, Jr.
LACY MAHON, JR.
77 Washington Street
Jacksonville, Florida 32202
Attorneys for Petitioners

I hereby certify that copy hereof has been furnished to the Hon. Roger J. Waybright, Circuit Judge, Respondent, Duval County Courthouse, Jacksonville, Florida, and to Messrs. Coffman and Jones, 1623 Barnett Bank Building, Jacksonville, Florida, attorneys for William E. Arnold Company, by U.S. Mail, this 4th day of June, 1971.

/s/ LACY MAHON, JR.
Attorney

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1971

THURSDAY, JULY 29, 1971

Case No. 41,199

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, ETC., ET AL.,

Petitioners,

vs.

THE HONORABLE ROGER J. WAYBRIGHT, as Circuit Judge, etc.,

Respondent.

ORDER ALLOWING CERTIORARI

The Petition herein for a Writ of Certiorari to the District Court of Appeal, First District of Florida, is granted and the cause is hereby set down for oral argument at 9:30 o'clock a.m., Friday, January 14, 1972. A maximum of 20 minutes to the side is allowed but counsel is expected to use only so much of that time as is necessary.

The Court has tentatively accepted jurisdiction of this case; however, the parties should be prepared to argue the jurisdictional issue should the question be raised by the Court.

The time for filing briefs on the merits is set forth in Rule 4.5c(6), F.A.R.

A True Copy

TEST:

/s/ Sid J. White
Clerk Supreme Court

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

FIRST DISTRICT

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, a labor organization, and as an unincorporated association, by and through JOHN H. SEA, business representative thereof; and CARPENTERS LOCAL UNION NO. 627, a labor organization, and as an unincorporated association, by and through EARL S. HUFF, assistant business representative thereof,

Relators,

vs.

THE HONORABLE ROGER J. WAYBRIGHT, as Circuit Judge of the Fourth Judicial Circuit, in and for Duval County, Florida,

Respondent.

SUGGESTION FOR WRIT OF PROHIBITION

Relators, Carpenters District Council of Jacksonville and Vicinity, a labor organization, and as an unincorporated association, by and through John H. Sea, business representative thereof; and Carpenters Local Union No. 627, a labor organization, and as an unincorporated association, by and through Earl S. Huff, assistant business representative thereof, file this Suggestion for Writ of Prohibition, and allege:

1. Carpenters Local Union No. 627 and the Carpenters District Council of Jacksonville and Vicinity, are unincorporated associations of persons who are associated together for the purpose of collective bargaining with reference to wages,

hours and working conditions; and as such constitute labor organizations within the intent and purview of the laws of the State of Florida.

2. The William E. Arnold Company, is a corporation organized within the laws of the State of Florida, to do business as a general contractor. The William E. Arnold Company entered into an agreement heretofore filed in this cause, with the Carpenter's Local Union No. 627, on May 1, 1968, and said agreement is still in full force and effect.

3. Article VI of said agreement pertains to work stoppages, slowdowns and strikes, in relation to Jurisdictional Disputes between Unions, stating that there shall be no strikes because of a Jurisdictional Dispute.

4. On or about April 23, 1971, William E. Arnold Company filed a Complaint for Injunction against the Relators herein in the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida, a copy of said Complaint is found in the certified copy of the Court record. Said Complaint alleging among other things:

> "10. Approximately one week ago, and again on April 21, 1971, Defendant Local 627's Assistant Business Representative, Earl S. Huff, asked Plaintiff's president, William E. Arnold, Jr., to change the assignment of the metal studs and furring work from the Wood Wire and Metal Lathers International Union, AFL-CIO, Local 59 to the Defendant Unions' employees, and further stated that he (Huff) would pull the defendant Unions' employees working for William E. Arnold Company off the job if the assignments weren't changed.
>
> 11. On April 22, 1971, Earl S. Huff, acting on behalf of the Defendant Unions instructed the carpenter em-

ployees of the Plaintiff to leave the job site, in clear violation of Article VI of Exhibit A attached hereto.

12. Since April 22, 1971, none of Plaintiff's carpenter employees have worked for plaintiff, nor are they presently working, because of the jurisdictional dispute between the Defendant Unions and Harvey Barnwell Co. and the Wood Wire and Metal Lathers International Union, AFL-CIO, Local No. 59, in clear violation of the no-strike promise contained in Article VI of Exhibit A."

That all of said allegations in essence specifically charge the Relators herein with engaging in a jurisdictional dispute. In fact, a reading of the Collective Bargaining Agreement clearly shows that the only "no strike provision" in the Collective Bargaining Agreement is contained in the paragraph dealing with jurisdictional disputes.

5. A hearing of the William E. Arnold Company's Application for temporary Restraining Order was held upon telephone notice to Relators, and while Relators were able to examine the Plaintiff's below witnesses, Relator was unable to present testimony upon such short notice. At the conclusion of the hearing a temporary Restraining Order was granted and issued by the Honorable Roger J. Waybright, Judge of said Court.

6. A certified copy of the Complaint for Injunction, including the aforesaid bargaining agreement, Injunction Bond, and Temporary Restraining Order issued by Judge Roger J. Waybright, are hereto attached and made a part hereof.

7. The conduct complained of by the William E. Arnold Company is exclusively within the jurisdiction of the National Labor Relations Board, pursuant to Title 29, Labor, Section 158 (b)(4)(i)(D) United States Code Annotated, and a

Florida Circuit Court is without jurisdiction to enjoin the Unions above, and said issue was argued before the Honorable Roger J. Waybright.

8. The abovesaid Unions are not subject to the jurisdiction of the Circuit Court, but the Circuit Court will, if not prohibited by the Writ of this Honorable Court, continue to assume jurisdiction and issue whatever Orders or future process it may deem proper.

9. The Carpenters District Council of Jacksonville and Vicinity and the Carpenters Local Union No. 627 have no plain, speedy or adequate remedy in the premises save that the issue of the Writ of Prohibition by this Honorable Court.

WHEREFORE, the Relators respectfully pray that this Honorable Court issue an alternative Writ of Prohibition directed to the Respondent, requiring him to show cause why the said Writ should not issue and be made permanent.

Respectfully submitted,

MAHON & MAHON

BY /s/ LACY MAHON, JR.
LACY MAHON, JR.
77 Washington Street
Jacksonville, Florida 32202
Attorneys for Relators

A - 12

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

COMPLAINT

Case No. 71-3623 - Division B

(Filed April 23, 1971)

WILLIAM E. ARNOLD COMPANY, a Florida corporation,

Plaintiff,

v.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, a labor organization, and as an unincorporated association, by and through JOHN H. SEA, business representative thereof; and CARPENTERS LOCAL UNION NO. 627, a labor organization, and as an unincorporated association, by and through EARL S. HUFF, assistant business representative thereof,

Defendants.

COMPLAINT FOR INJUNCTION

The Plaintiff, William E. Arnold Company, by its undersigned attorneys, brings this its Complaint for Injunction against the Defendants, Carpenters District Council of Jacksonville and Vicinity, a labor organization, and as an unincorporated association, by and through John H. Sea, business representative thereof; and Carpenters Local Union No. 627, a labor organization, and as an unincorporated association, by and through Earl S. Huff, assistant business representative thereof, and alleges:

1. The Plaintiff, William E. Arnold Company, is a corporation organized, chartered and existing under the laws of the State of Florida, and which is duly qualified and authorized to do business within the State of Florida, and to sue and be sued in the Courts of the State of Florida. At all times mentioned in this Complaint, the Plaintiff has maintained and operated within the City of Jacksonville, County of Duval, State of Florida, at 751 Riverside Avenue, in said City, a place of business which is, more particularly, an office used by the Plaintiff in its business as a general contractor.

2. The Defendant Unions are unincorporated associations of persons who are associated together for the purpose of collective bargaining with reference to wages, hours and working conditions. The members of said Unions therefore constitute a single class of persons within the meaning of the Florida Rules of Civil Procedure, Rule 1.220. The membership of said Unions is so numerous as to make it impractical to serve each and every member.

3. Defendant Unions are labor organizations within the intent and purview of the laws of the State of Florida, and within the meaning of 447.11, Florida Statutes. Said Defendant Unions maintain a business office at 920 Main Street, Jacksonville, Florida, have representatives, including John H. Sea and Earl S. Huff, and have members located in Jacksonville, Florida, and at all times mentioned in this Complaint, were and continue to be doing business within the State of Florida and within Duval County. Defendants, John H. Sea and Earl S. Huff are persons, among others, in charge of the business of the Unions in Duval County.

4. The matters described and alleged in this Complaint all occurred in Jacksonville, Duval County, Florida.

5. On May 1, 1968, Defendants entered into a collective bargaining Agreement with the Plaintiff and other employers who are members of the Northeastern Florida Chapter of the Associated General Contractors of America, which Agreement is attached hereto and made a part hereof as marked Exhibit A. Plaintiff was and is a member of the Northeastern Chapter of the Associated General Contractors of America, is a signatory to said Agreement, and is bound by the terms and conditions of Exhibit A. Said Agreement is still in full force and effect and does not terminate until April 30, 1971.

6. Article VI of said collective bargaining Agreement is essentially a no-strike promise on the part of Defendants that neither they nor their members will cause or participate in any strikes, slowdowns, or cessations of work whatever because of a jurisdictional dispute, and said Article VI reads as follows:

> "There shall be no work stoppage, slowdown, work cessation or strike because of a Jurisdictional Dispute. A mutually agreeable settlement, or joint decision of the International Unions involved, or decision or interpretation of the National Joint Board for the Settlement of Jurisdictional Disputes (or Hearing Panel) shall be binding and all parties agree to accept such decision or interpretation.
>
> All parties agree that they are bound by the 'Procedural Rules and Regulations of the National Joint Board for Settlement of Jurisdictional Disputes' and by the terms and provisions of the Agreement effective May 1, 1948, as amended, creating the Joint Board, and in particular the provision of the Agreement which states: 'Any decision or interpretation by the Joint Board (or Hearing Panel) shall immediately be accepted and com-

plied with by all parties signatory to this Agreement' and also in particular the provision which states: 'When the Contractor has made a specific work assignment in accordance with the procedures herein established by the Joint Board."

7. Plaintiff is presently employed as general contractor for construction of the Jacksonville General Hospital located at 4901 Richard Street, Jacksonville, Florida, at a total contract price of 2.3 million dollars.

8. Plaintiff has sub-contracted to Harvey Barnwell Co., the installation and construction of all metal studding, drywall, plaster and stucco in the Jacksonville General Hospital.

9. Harvey Barnwell Co. has a collective bargaining Agreement with Wood Wire and Metal Lathers International Union, AFL-CIO, Local No. 59, and in accordance with that contract has assigned its employees, who are members of such union, the work of installation of the metal studs and metal furring.

10. Approximately one week ago, and again on April 21, 1971, Defendant Local 627's Assistant Business Representative, Earl S. Huff, asked Plaintiff's president, William E. Arnold, Jr., to change the assignment of the metal studs and furring work from the Wood Wire and Metal Lathers International Union, AFL-CIO, Local No. 59, to the Defendant Unions' employees, and further stated that he (Huff) would pull the Defendant Unions' employees working for William E. Arnold Company off the job if the assignments weren't changed.

11. On April 22, 1971, Earl S. Huff, acting on behalf of the Defendant Unions instructed the carpenter employees of the Plaintiff to leave the job site, in clear violation of Article VI of Exhibit A, attached hereto.

12. Since April 22, 1971, none of Plaintiff's carpenter employees have worked for Plaintiff, nor are they presently working, because of the jurisdictional dispute between the Defendant Unions and Harvey Barnwell Co. and the Wood Wire and Metal Lathers International Union, AFL-CIO, Local No. 59, in clear violation of the no-strike promise contained in Article VI of Exhibit A.

13. It is essential to the successful completion of Plaintiff's work that its carpenter employees perform work for Plaintiff in accordance with their promise to do so in Exhibit A, and that Defendant Unions and their members abide by the no-strike promise contained in Article VI of Exhibit A.

14. By reason of the wrongful and continuing breach of Exhibit A by the Defendant Unions and their members, the Plaintiff will be irreparably damaged unless the Defendant Unions, their members, officers, agents and representatives, and Defendants' representatives John H. Sea and Earl S. Huff are immediately restrained by an Order of this Court from continuing their wrongful breach of Exhibit A.

15. The damage and injury which Plaintiff has suffered and will continue to suffer absent the relief sought herein, is of such a nature that it will be difficult or impossible to ascertain the amount of damage and injury, and the Defendant Unions may not be financially able to respond in an action at law for such damages. Therefore, Plaintiff has no adequate remedy at law.

16. Far greater injury will be inflicted upon Plaintiff and its employees by denial of the relief sought herein than will result to the Defendants by the granting of said relief. This Court has jurisdiction of the subject matter and of the parties and is the only forum that can grant relief to the Plaintiff. Plaintiff has no plain, speedy or adequate remedy at law.

Unless the illegal conduct of Defendants is immediately restrained and enjoined by this Court, Plaintiff may suffer irreparable injury.

WHEREFORE, Plaintiff prays:

1. A Temporary Restraining Order be immediately issued providing that until further Order of this Court, Defendants, and each of them and their officers, agents, members, servants, employees, attorneys, and representatives, and those persons in active concert or participation with them, and all persons having knowledge of the Court's Order, be immediately restrained and enjoined from:

(a) Causing, inducing, participating in or aiding any refusal to work for Plaintiff in violation of Article VI of the Agreement (Exhibit A).

(b) Committing, doing, or uttering any act, word or deed, written, spoken or performed, singularly or in concert, which is intended, designed or calculated, to induce, persuade, order, cause or bring about any breach of the aforesaid collective bargaining Agreement between Defendant Unions and Plaintiff, or which is intended, designed or calculated to induce, persuade, order, cause or bring about any work stoppage by or on the part of any person in violation of the aforesaid Agreement (Exhibit A).

(c) Taking any other action whatsoever for the purpose of causing any such breach of contract or work stoppages in violation of said Agreement (Exhibit A).

COFFMAN & JONES
1623 Barnett Bank Building
Jacksonville, Florida 32202

By /s/ J. P. Jones
Attorneys for Plaintiff

STATE OF FLORIDA)
) ss.
COUNTY OF DUVAL)

The affiant, William E. Arnold, Jr., being first duly sworn, deposes and says:

My name is William E. Arnold, Jr., and I am the president of William E. Arnold Company, and I have authority, on behalf of said Company, to make this affidavit and to institute this action. I have read the foregoing Complaint for Injunction, and the allegations contained therein are true, of my own knowledge, and on information and belief.

Dated this 23rd day of April, 1971.

/s/ William E. Arnold, Jr.

Sworn to and subscribed before me by
William E. Arnold, Jr., at Duval County,
Florida, this 23rd day of April, 1971.

/s/ Gloria W. Travassos
Notary Public, State of Florida at Large.

My Commission Expires September 14, 1973.

EXHIBIT A

Case No. 71-3623

(Filed April 23, 1971)

CARPENTERS

AGREEMENT

(Effective May 1, 1968 to April 30, 1971)

THIS AGREEMENT made and entered into by and between the undersigned individuals firms and corporations engages in the General Contracting business (hereinafter) called "Contractors") and the Carpenters District Council of Jacksonville and Vicinity, and all of the local Unions which comprise the Carpenter's District Council of Jacksonville, Florida (hereinafter called the "Union")

WHERE, the continuous and uninterrupted operation of the Contractors business and orderly collective bargaining relations between the Contractors and the Union are the essential consideration of this Agreement, and

WHEREAS, the parties hereto have reached this Agreement, through collective bargaining for the purpose of promoting harmony, safety, cooperation, efficiency, economy and quality of workmanship.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

PRIOR AGREEMENTS

All prior Agreements entered into by and between the parties hereto, and all amendments to any such Agreements have heretofore been cancelled and terminated and such cancellation and termination is now recognized, ratified and confirmed by all parties signatory to this Agreement.

ARTICLE II
EFFECTIVE DATE

This Agreement shall become effective on the 1st day of May, A.D. 1968, which is the date of its execution by the Union and shall continue in full force and effect until the 30th day of April, A.D. 1971, which shall be the anniversary date. It shall continue thereafter from year to year unless terminated or modified in the manner hereinafter set forth.

ARTICLE III
TERRITORIAL JURISDICTION

The territorial area covered by this Agreement is hereby defined to be the Counties of Madison, Taylor, Hamilton, Suwannee, LaFayette, Dixie, Bradford, Levy, Gilchrist, Columbia, Baker, Union, Alachua, Nassau, Duval, Clay, St. Johns, Putnam, Marion, Citrus, Lake Sumter, and that portion of Flagler County on the Palatka side of a line midway between Daytona Beach and Palatka, in the State of Florida, and in the State of Georgia and the cities of Kingsland, St. Mary's and Folkston.

ARTICLE IV
NO LIMITATION ON OUTPUT

It is agreed that there shall be no limitation placed on the output of the individual workmen. There shall be no prohibition against the use of labor saving tools, machinery, equipment or devices; provided the same are in good operating condition and their use does not constitute a hazard to life, limb or health. If any question arises as to the condition of such tools, machinery, equipment or devices, the decision of any regularly employed safety engineer for any of the insurance companies authorized to do business in Florida shall be binding upon the parties signatory hereto.

ARTICLE V
DISPUTES

In the event of a dispute (other than jurisdictional) arising on the job, two (2) working days notice of such dispute will be given the employer before any action on the Union's part such as strikes, picket lines, work stoppages of any kind, shall be taken so there will be an opportunity to settle the dispute before presenting it to the Joint Grievance Committee as hereinafter specified.

There shall be a Joint Grievance Committee of six (6) consisting of three (3) authorized representatives of Management and three (3) authorized representatives of Labor. It is mandatory that this committee shall meet promptly upon request by any party hereto and providing there is no work stoppage shall decide all grievances and disputes arising under this Agreement. Should any member of the Committee be involved in the dispute or be unavailable a duly authorized alternate shall act for him. The decision of the Committee shall be final and binding on all parties. In the event the Committee is unable to reach a decision within two (2) weeks, it shall select a referee who decision shall be final. Such a referee shall be a resident of the State of Florida; he shall be selected and shall render a decision all within an additional period of two (2) weeks. It is not the intent or purpose of this Article V that the Grievance Committee shall negotiate any changes or modification of this Agreement, or handle any Jurisdictional disputes. All Jurisdictional disputes shall be referred to the National Joint Board for Jurisdictional Disputes.

ARTICLE VI
JURISDICTIONAL DISPUTES

There shall be no work stoppage, slowdown, work cessation

or strike because of a Jurisdictional Dispute. A mutually agreeable settlement, or joint decision of the International Unions involved, or decision or interpretation of the National Joint Board for the Settlement of Jurisdictional Disputes (or Hearing Panel) shall be binding and all parties agree to accept such decision or interpretation.

All parties agree that they are bound by the "Procedural Rules and Regulations of the National Joint Board for Settlement of Jurisdictional Disputes" and by the terms and provisions of the Agreement effective May 1, 1948, as amended, creating the Joint Board, and in particular the provision of the Agreement which states: "Any decision or interpretation by the Joint Board (or Hearing Panel) shall immediately be accepted and complied with by all parties signatory to this Agreement" and also in particular the provision which states: "When the Contractor has made a specific work assignment in accordance with the procedures herein established by the Joint Board."

ARTICLE VII
WORK ASSIGNMENTS

The parties signatory to this agreement shall abide by the following:

> Work assignments shall be made in accordance with area practice and decisions of the National Joint Board or as agreed to between the International Unions.

ARTICLE VIII
MODIFICATION

Any party desiring a modification of this Agreement shall give written notice, by registered mail, to the other parties hereto not less than ninety days prior to any anniversary date; provided that any party hereto by written notice, by registered

mail, to all other parties given not less than sixty (60) days prior to any anniversary date may terminate this Agreement. This Agreement may be modified or terminated on an anniversary date.

ARTICLE IX
VIOLATION OF LAW

It is not the intent or purpose of this Agreement to violate any State or Federal Statute, regulation or constitutional provision. Any provisions of this Agreement which are in violation of any National, State or Local or Governmental regulation affecting all or part of the territorial limits covered by this Agreement shall be suspended in operation within the territorial limits to which such law or regulation is applicable for the period during which such law or regulation is in effect. Such suspension shall not affect the operation of such provision in territories covered by the Agreement to which the law or regulation is not applicable, or shall it affect the operation of the remainder of the provisions of the Agreement within the territorial limit to which such law or regulation is applicable.

ARTICLE X
WAGES

Commencing the first full pay period following the effective date of this Agreement the hourly wages are as follows:

	1st Pay Period After 5/1/68	1st Pay Period After 11/1/68	1st Pay Period After 5/1/69	1st Pay Period After 11/1/69	1st Pay Period After 5/1/70	1st Pay Period After 11/1/70
Wages	$4.25	$4.35	$4.50	$4.57	$4.64	$4.64
Health & Welfare	.12	.12	.17	.17	.19	.19
Pension	.10	.15	.15	.15	.15	.15
Vacation	.05	.05	.10	.15	.15	.15
Apprentice Fund	.02	.02	.02	.02	.02	.02
Total	$4.54	$4.69	$4.94	$5.06	$5.15	$5.15

Foreman shall be paid 45¢ per hour above the applicable Journeyman's rate. General Foreman shall be paid 65¢ per hour above the applicable Journeyman's rate.

Certified welder shall be paid 25¢ above the Journeyman's scale only for the time that he is actually welding. Proof of certification will be given to the Contractor.

Union Members performing work with creosote lumber or other toxic material which is injurious to the health or skin shall be paid 25¢ above the Journeyman's rate.

Divers will be paid $50.00 per day.

APPRENTICES:

1st six months – 50% of Journeyman's scale
2nd six months – 55% of Journeyman's scale
3rd six months – 60% of Journeyman's scale
4th six months – 65% of Journeyman's scale
5th six months – 70% of Journeyman's scale
6th six months – 80% of Journeyman's scale
7th six months – 90% of Journeyman's scale
8th six months – 95% of Journeyman's scale

For all hazardous work there shall be paid a premium of 25¢ per hour while the craftsman is so engaged. For the purpose of this Section, hazardous work is defined to be:

1) Working on a scaffold or tower where the floor or ground level or place of excavation is 25 feet or more below.

2) While building is in framing stage, work within five (5) feet of edge of any building or uncovered shaft when same is twenty-five (25) feet above floor below or ground level or place of excavation. (Hazardous ex-

posure to cease in this area when guard rails are installed.)

3) Work in excavated pits (basement not included) cofferdams, etc., ten (10) feet or more below the ground or water level.

Travel expense will be allowed at the rate of one hours pay, at Journeyman's rate when the job is twenty (20) miles or more from the City Limits of any area where any Local exists. (The present city limits as platted May 1, 1968 shall apply for the duration of this Contract). Locals are located in Jacksonville, Live Oak, Gainesville, St. Augustine, Ocala and Palatka, Florida.

Carpenters starting to work on new job must bring their tools on job sharp and in condition to begin work, after which tools must be sharpened and kept in working condition on the Contractor's time.

Any Carpenter suffering an accident shall report same to the Foreman who shall make a written report of the accident to his employer. The employee shall not lose any time that day and management must furnish transportation to and from the doctor. In the event the employee is released for light work by the doctor, time lost going to the doctor must not be deducted from the employees pay.

ARTICLE XI
HOLIDAYS

It is agreed that the following shall be known as official holidays:

New Year's Day (January 1st)	Labor Day
Memorial Day (May 30th)	Thanksgiving Day
Independence Day (July 4th)	Christmas Day (December 25th)

Should any of such days fall on a Sunday, the Monday following shall be considered as the holiday. Should any of such days fall on a Saturday, the preceding Friday shall be considered as the holiday.

ARTICLE XII
HOURS

A work day shall consist of an eight (8) hour and thirty (30) minute period, with thirty (30) minutes out for lunch on the workman's own time, between the hours of 7:30 o'clock A.M. and 5:00 o'clock P.M. Monday through Friday inclusive. Permission will be granted by the Union, without overtime pay, to start work at 7:00 AM, if requested by the employer.

When two or more shifts are employed, seven (7) hours shall constitute a days work for the second and third shifts, for which the regular wage for eight (8) hours shall be paid, or a proportionate part thereof for time worked.

All work performed on Sunday and the hereinbefore designated Holidays, shall be paid double the effective hourly wage scale. All work exceeding eight (8) hours on any work days as well as work performed on Saturday, shall be paid time and one-half the effective hourly wage scale.

The Contractor shall allow the Carpenters employed on the job ten (10) minutes at the end of each day to pack their tools in tool chest. (Ten minutes to be on company time.)

ARTICLE XIII
OVERTIME

Any member being employed regularly shall not be permitted to work overtime for another employer, and where overtime is necessary, after the men working on the job have been placed, any additional men required must be taken from the ranks of the unemployed. In no case can a member work

for more than one employer in twenty-four hours unless he is laid off by his employer. In the event that the second shift is discontinued, eight hours must elapse before returning on the same job.

ARTICLE XIV
LAYOFFS

When a member is discharged or laid off he must be given not less than one hours notice of same in order that he may collect and sharpen his tools and he shall receive his pay in full on the job at such time, or waiting time must be charged until he does receive his pay in full.

If a member while in employment is laid off upon reporting to work in the morning he must be paid two hours time in addition to the amount previously due him. The men laid off must be put to work before other men are employed. When a member has been requested by the employer through his Business Representative, and is refused employment upon arriving at the job with his tools, he must be paid four (4) hours time provided he arrived at the time specified, or within one hour, if delay in reporting is unavoidable.

Any member reporting for work at start of shift, not being permitted to start work through no fault of his own shall be paid for two hours report time, if any work is performed, he shall receive four hours time.

ARTICLE XV
UNFIT WEATHER

The steward, jointly with the foreman, shall determine when the weather is fit for work, and if in their judgment the day is declared unfit, they shall notify all carpenters that they may leave the job. This must not apply to emergency work or members working under cover. If steward and foreman

cannot agree, subject will be taken by vote of members involved, majority to rule and all members affected must vote. Weather permitting employer may re-start the job by notifying the Business Agent so that he in turn may notify the steward and the members to return to work.

ARTICLE XVI
PAYDAY

Every employer must pay his carpenters before the end of a working shift on pay day each week in full lawful money of the United States, or by negotiable check through arrangements with the Union. If the Carpenters are not paid as herein specified the employer shall be charged waiting time at single time for the regular hours at end of shift and no work shall be done for said employer until the matter is adjusted.

ARTICLE XVII
APPRENTICESHIP

Employers signatory to this Agreement shall make contributions to the North Florida Carpenters' Joint Apprenticeship Committee Trust Fund based on .02¢ per hour, for each hour worked by the members of the United Brotherhood of Carpenters and Joiners of America, apprentices included, on a straight time basis. This shall not conflict with any State, Local or Federal Laws.

The ratio of apprentices, shall be one (1) for each two (2) journeymen and one (1) for each additional four (4) journeymen thereafter. Apprentices shall be used wherever possible.

ARTICLE XVIII
HEALTH AND WELFARE FUND

Employers signatory to this Agreement shall make contributions to the Carpenters District Council Health and Welfare

Fund based on each hour worked for the Contractors by members of the Union, apprentice hours included, straight time only, according to the schedule under ARTICLE X, WAGES. However, the carpenter superintendent, by individual choice, may elect not to be covered by this Welfare Trust Agreement, by written notice to the Union and his Employer.

A committee consisting of three (3) representatives appointed by the Union and three (3) representatives appointed by the Contractors shall continue to administer the Trust Fund.

ARTICLE XIX
PENSION TRUST AGREEMENT

Employers signatory to this Agreement shall make contributions to the Carpenters District Council of Jacksonville and Vicinity Pension Fund based on each hour worked for the Contractors by members of the Union, apprentice hours included, straight time only, according to the schedule under ARTICLE X, WAGES.

A committee consisting of three (3) representatives appointed by the Union and three (3) representatives appointed by the Contractor shall administer the Pension Fund.

ARTICLE XX
VACATION TRUST AGREEMENT

Employers signatory to this Agreement shall make contributions to the Carpenters District Council of Jacksonville and Vicinity Vacation Trust Fund which will administer and disburse the vacation funds to the members of the Union annually, in accordance with the conditions and procedures to be formulated by the Vacation Trust Committee. Contributions shall be made by the Contractor on each hour worked for the Contractor by members of the Union, appren-

tice hours included, straight time only, according to the schedule under ARTICLE X, WAGES.

A committee consisting of three (3) representatives appointed by the Union and three (3) representatives appointed by the Contractors shall set up the necessary rules and regulations, and administer this Fund.

ARTICLE XXI
HIRING PROCEDURES

There shall be no discrimination in the employment of carpenters on any job; regardless of age, sex, race, color, creed, or national origin.

ARTICLE XXII
AGE QUALIFICATIONS

One out of every five members employed shall be fifty-five years old or older, when available.

ARTICLE XXIII
STEWARDS

The Contractor recognizes the right of the Union to appoint shop stewards on all jobs being operated by the Contractors. The steward shall be a qualified Carpenter and the Contractor shall not discharge the steward for performing his duties as steward on the job. However, the Contractor is the sole judge of the Steward's capabilities and efficiency. The steward shall remain on the job all hours that carpenters work is being done, including overtime work. If job is shut down the steward shall be the first man re-employed. The steward shall be allowed sufficient time to perform his duties and shall not be discharged because of his activities in enforcing the Agreement as herein delineated. In the event it becomes necessary to discharge a steward the Contractor shall give the Business Agent two (2) working days notice prior

to the time the discharge is to take effect, in order that the Union may furnish a substitute steward. No steward shall be terminated without just cause. Just cause for termination shall include, but shall not be limited to, drinking on the job, fighting, not performing his duties as a workman, promoting disharmony on the job.

ARTICLE XXIV
FOREMAN

When there are three or more carpenters employed on any job, there shall be a Union Carpenter Foreman who shall give orders directly to the men. He in turn will receive his orders from the General Foreman or Superintendent. No foreman to be supervisor over more than fourteen (14) carpenters at any time. Any additional carpenters over fourteen shall require an additional foreman. Further, foremen with small crews, not to exceed four (4) men, are allowed to use their own tools. For jobs requiring two (2) foremen or more, there shall be a General Foreman. The Field Engineer shall not be used in lieu of a carpenter foreman.

ARTICLE XXV
RAIN GEAR

When the job steward deems it necessary and to the best interest of the members' health the Contractor must furnish rubber boots and raincoats or other rain gear. The Contractor must have sufficient boots and coats in the warehouse or tool room. The Contractor is required to sterilize the above mentioned equipment before interchanging between employees.

ARTICLE XXVI
TOILETS

Contractors must provide sanitary toilets at convenient locations, adjacent to where the majority of the men are work-

ing, and approved by the Board of Health on all projects of any duration.

ARTICLE XXVII
ICE WATER

All contractors or other persons employing carpenters must furnish ice water as the season may require, in suitable containers with faucets, also individual paper drinking cups.

ARTICLE XXVIII
SAW FILING

The employer must furnish all necessary files and special clamps for filing saws on the job. All saw filers shall be members of the United Brotherhood. There shall be no filing of saws, sharpening or grinding tools on the job other than during working hours.

ARTICLE XXIX
TOOL SHEDS OR BOXES

Contractor will be required to furnish ample weather proof tool sheds or boxes properly locked to be used exclusively by carpenters. Boxes to be in convenient location.

ARTICLE XXX
MOVING TOOLS

Any employer sending members from one job to another shall allow time to move tools to the next job, the same to be moved during working hours.

ARTICLE XXXI
PRE-FABRICATED MATERIALS

The employer agrees not to purchase pre-fabricated wood-framed walls, wooden forms or wooden tee jacks. This shall not prevent the employer from pre-fabricating these items off site, with his own forces or purchasing the above listed items from other parties which have an Agreement with this Union.

ARTICLE XXXII
TRADE AUTONOMY

The Trade Autonomy of the United Brotherhood of Carpenters and Joiners of America consist of the milling, fashioning, joining, assembling, erecting, fastening, dismantling of wood, hollow metal, fiber, plastics, glass, or any other material where tools, skill and knowledge of carpentry are required. The laying of all cork, carpets, resilient flooring, all cement asbestos boards, corrugated asbestos, and trancell, nucite, chalkboards, bulletin boards and material of similar composition, asphalt shingles and all plastic, acoustical and insulation material which is normally installed by carpenters and/or such new substitute material of similar manufacture, which may later be developed, the erecting and dismantling of wood working machinery, diving, (including divers' tenders), the manufacture of all wood materials where the skill, knowledge and training of a carpenter are required either through the operation of machines or hand tools.

This jurisdiction shall extend over the following divisions and sub-divisions of the trade: Carpenters and Joiners; carpenters on maintenance, ship carpenters, joiners and caulkers, shipwrights, bridge, dock and wharf carpenters, of driving all piles, floor layers, cabinet makers, bench hands, and all those engaged in the operation of wood working machinery, and all underpinning pertaining to the Carpenter's jurisdiction.

When the term "Carpenters and Joiners" is used, it shall mean all sub-divisions of the trade as herein specified.

All wood work on all bridges and construction work and all such work to be done by members of the United Brotherhood of Carpenters and Joiners of America is to be in accordance with the following specifications; the making and setting of all concrete forms, making forms, the erection of all precast

concrete beams, tees, and exterior concrete wall slabs in accordance with area practice which uses a composite crew for such erection and the rigging of all material covered by this Agreement; the making of molds for concrete or other building blocks when same are of wood or other fibrous materials; the assembling and erecting of all metal forms when used in place of wood; the installing of all metal pans used as concrete forms. The removal of forms shall be in accordance with the International Agreement between the Carpenters and the Laborers.

The building of scaffolds, tresles, ladders, derricks, hoists, travelers, pile drivers and other appliances, made wholly of or in part of wood, which are used in construction work. All welding and burning pertaining to pile drivers must be done by pile drivers. The preparing, fitting and construction of all framing, when same is of wood or other like material, shingles, etc.; the making and putting on of all grounds for plaster, including wood casing beads where casing beads trim out windows and door openings; the cutting off and capping of all piling.

The staying and setting of all frames, wood or metal, sashes, doors, hollow metal or wood; metal trim, venetian blinds, casework, fixtures and all other materials manufactured in planing mills, cabinet shops and all other wood working factories, plumbing, leveling and bracing of all hollow metal door frames, where same are set in unfinished walls and plumbed, leveled; stayed or braced; the making and assembling, erecting and installing of all fixture, opera chairs, seats, benches and all other furniture but the unloading of such material shall also be the work of the carpenter unless such material is delivered in cartons. Also, all handling and cutting and placing of all roof board such as sheet rock, U.S.

Gypsum board, celotex, masonite, porex, whether flat or concave or other similar material. Also, cemesto-board whether on wall or ceiling. Further, the installation of acoustical materials, metal partitions, and metal fixtures and furniture, excluding metal toilet partitions. Further, the installation of all overhead doors, tracks, and guides, including whether it be wood or metal.

All other decisions to be rendered by the Building and Construction Trades Department of the American Federation of Labor. All burning and welding pertaining to the work assigned jurisdictionally to the Brotherhood of Carpenters shall be done by members of the Brotherhood. Also, the installation of weather stripping on all openings. Making of all templates and setting of all anchor bolts belongs to the Carpenters. The making of all eye bolts and form bolts and threading of same used in connection with form and scaffolding building. Also, installing metal thresholds and metal door strips. This Article shall not take precedence over other Articles of this Agreement.

THIS AGREEMENT WAS NEGOTIATED BETWEEN THE LABOR RELATIONS COMMITTEE OF THE NORTHEASTERN FLORIDA CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS AND THE UNION SIGNATORY HERETO.

THIS AGREEMENT IS BINDING ONLY TO THOSE INDIVIDUALS, FIRMS AND CORPORATIONS AND THE UNION WHO ARE SIGNATORY HERETO.

CHAIRMAN,
LABOR RELATIONS COMMITTEE

/s/ DANA B. KENYON

(Signatures of contractors, including

William E. Arnold Co.
BY: /s/ W. E. Arnold, Jr., President)

Signed, Sealed and Delivered
in the presence of:
/s/ Clay Mort
Clay Mort

Signed, Sealed and Delivered
John H. Sea
Earl S. Huff

FOR THE UNION:
A. A. Howell
L. D. Underwood, Jr.

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA.

Division - B

ORDER

Case No. 71-3623

(Filed April 23, 1971)

WILLIAM E. ARNOLD COMPANY, a Florida corporation,

Plaintiff,

v.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, a labor organization, and as an unincorporated association, by and through JOHN H. SEA, business representative thereof; and CARPENTERS LOCAL UNION NO. 627, a labor organization, and as an unincorporated association, by and through EARL S. HUFF, assistant business representative thereof,

Defendants.

ORDER

THIS CAUSE coming on to be heard on Plaintiff's sworn bill of Complaint and upon its application for a Temporary Restraining Order, and after telephoned notice a hearing having been held at which the defendants' attorney was present and sworn testimony and other evidence was received, and it appearing that the injuries apprehended will be done if

an immediate remedy is not afforded, and that, therefore, Plaintiff is entitled to a Temporary Restraining Order herein, it is therefore,

ORDERED, that pending further order of this Court herein:

The Defendants, and each of them and their officers, agents, members, servants, employees, attorneys, and representatives, and those persons in active concert or participation with them, and all persons having knowledge of the Court's Order, be immediately restrained and enjoined from:

(a) Causing, inducing, participating in or aiding any refusal to work for Plaintiff at the Jacksonville General Hospital, 4901 Richard Street, Jacksonville, Florida, in violation of Article VI of the collective bargaining Agreement between the parties dated May 1, 1968.

(b) Committing, doing, or uttering any act, word or deed, written, spoken or performed, singularly or in concert, which is intended, designed or calculated, to induce, persuade, order, cause or bring about any breach of Article VI of the aforesaid collective bargaining Agreement between Defendant Unions and Plaintiff, or which is intended, designed or calculated to induce, persuade, order, cause or bring about any work stoppage by or on the part of any person in violation of Article VI of the aforesaid Agreement.

(c) Taking any other action whatsoever for the purpose of causing any such breach of contract or work stoppages in violation of Article VI of said Agreement.

This Temporary Restraining Order shall become of full force and effect upon the Plaintiff giving bond as required by law in the sum of $5,000.00, and approved by the Court

or its Clerk and upon the giving and approving of said bond, such approval to be endorsed hereon.

ORDERED IN Jacksonville, Duval County, Florida, this 23rd day of April, 1971.

/s/ ROGER J. WAYBRIGHT
Judge

NORTHEASTERN FLORIDA CHAPTER

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

COPY

Chairman,
National Joint Board
815 - 16th Street, N. W.
Washington, D. C.

May 11, 1966

Dear Sir:

For the information of the National Joint Board, and in order to promote and maintain harmonious labor conditions in the area, we wish to advise the National Joint Board that the prevailing area practice for Dry Gypsum Work in our area is as follows:

1) The installation of the 1-1/2" channels or other similar carrying members and the inserts and/or hangers for supporting such channels or carrying members, and the cross furring channels for suspended dry gypsum ceilings is the work of the Lathers. The attachment of the dry gypsum material to the cross furring channels is the work of the Carpenters.

2) The installation of metal studs, and the floor and ceiling channels to receive the metal studs, shall be the work of the Carpenters where such studs are to receive dry gypsum walls. The installation of metal studs, and the floor and ceiling channels to receive the metal studs, shall be the work of the Lathers, where such studs are to receive metal lath, rock lath, etc., which serves as a base for plaster or stucco.

After thorough investigation, we realize that there have been certain minor exceptions to the above, in the past, but we believe that the definition of *prevailing area practice*, as described, is a fair and correct evaluation of work of this nature which has been performed in our area.

Sincerely,

/s/ Clay Mort
Clay Mort,
Executive Manager

CM/r
cc: All Plastering & Drywall Contractors
Lathers' Union
Carpenters Union

Filed in Evidence
Case No. 71-3823
Defendant's Exhibit No. 1
April 23, 1971
Roger J. Waybright
Circuit Judge

INJUNCTION BOND
(Filed April 23, 1971)

KNOW ALL MEN BY THESE PRESENTS: That William E. Arnold Company as principal and Transamerica Insurance Company, are held firmly bound unto the Defendants in the sum of $5,000.00 to payment of which they bind themselves, jointly and severally, each for himself, his heirs, legal representatives and assigns, firmly by these presents.

Sealed with their seals and dated this 22nd day of April, 1971.

The condition of the above obligations is such that whereas the Plaintiff has filed in the Circuit Court in and for Duval County, Florida Complaint for Injunction against the above Defendants, and upon this day of April, 1971, has obtained a Temporary Injunction from said Court restraining and enjoining the Defendants from certain acts, now, if the Plaintiff shall abide the decision of said Court and pay such costs for damages as may be incurred and suffered by the Defendants in the event Defendants shall be found to have been injured by the wrongful entry of said Temporary Injunction, then these presents shall be void, otherwise to remain in full force and effect.

WILLIAM E. ARNOLD COMPANY
/s/ William E. Arnold, Jr. (SEAL)
As Principal President

TRANSAMERICA INSURANCE CO.
Harvard F. Eubanks (SEAL)
Attorney-in-Fact
As Surety

Approved:
S. MORGAN SLAUGHTER,
CLERK OF THE CIRCUIT COURT
By Dorothy Wood
Deputy Clerk

FORM

TRANSAMERICA INSURANCE COMPANY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That TRANSAMERICA INSURANCE COMPANY, a corporation of the State of California does hereby make, constitute and appoint

CECIL W. POWELL, HARVARD F. EUBANKS, JOHN A. MIDDLETON and GEORGE O. MIDDLETON,
——— of JACKSONVILLE, FLORIDA ———
——each——

its true and lawful Attorney(s)-in-Fact, with full power and authority, for and on behalf of the Company as surety, to execute and deliver and affix the seal of the Company thereto, if a seal is required, bonds, undertakings, recognizances or other written obligations in the nature thereof, as follows:

> Any and all bonds and undertakings not exceeding in amount ONE MILLION AND NO/100 ($1,000,000.00) DOLLARS, in any single instance, for or on behalf of this Company, in its business and in accordance with its charter,

and to bind TRANSAMERICA INSURANCE COMPANY thereby, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed. This appointment is made under and by authority of the following by-laws of the Company which by-laws are now in full force and effect:

ARTICLE VII

SECTION 30. All policies, bonds, undertakings, certifi-

cates of insurance, cover notes, recognizances, contracts of indemnity, endorsements, stipulations, waivers, consents of sureties, re-insurance acceptances or agreements, surety and co-surety obligations and agreements, underwriting undertakings, and all other instruments pertaining to the insurance business of the Corporation, shall be validly executed when signed on behalf of the Corporation by the President, any Vice President or by any other officer, employee, agent or Attorney-in-Fact authorized to so sign by (i) the Board of Directors, (ii) the President, (iii) any Vice President, or (iv) any other person empowered by the Board of Directors, the President or any Vice President to give such authorization; provided that all policies of insurance shall also bear the signature of a Secretary, which may be a facsimile, and unless manually signed by the President or a Vice President, a facsimile signature of the President. A facsimile signature of a former officer shall be of the same validity as that of an existing officer.

The affixing of the corporate seal shall not be necessary to the valid execution of any instrument, but any person authorized to execute or attest such instrument may affix the Corporation's seal thereto.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company at a meeting duly called and held on the 17th day of October 1963.

> "Resolved, That the signature of any officer authorized by the By-laws and the Company seal may be affixed by facsimile to any power of attorney or special power of attorney or certification of either given for the execution of any bond undertaking, recognizance or other written obligation in the nature thereof; such signature and

seal, when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, TRANSAMERICA INSURANCE COMPANY has caused these presents to be signed by its proper officer and its corporate seal to be hereunto affixed this 22nd day of February 1967.

TRANSAMERICA INSURANCE COMPANY

By /s/ T. M. Gregory,
Vice President

State of California)
ss
County of Los Angeles)

On this 22nd day of February, 1967, before me personally came T. M. Gregory to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Pasadena, State of California that he is a Vice-President of Transamerica Insurance Company, the Corporation described in and which executed the above instrument; that he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

/s/ E. Church
E. CHURCH, Notary Public
My Commission Expires July 17, 1970

I, J. B. Crawford, Assistant Secretary of Transamerica Insurance Company, do hereby certify that the Power of Attorney herein before set forth is a true and exact copy and is still in force, and further certify that Section 30 of Article VII of the By-Laws of the Company and the Resolution of the Board of Directors, set forth in said Power of Attorney are still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Company this 22nd day of April, 1971.

/s/ J. B. Crawford

J. B. Crawford, Assistant Secretary

IN THE SUPREME COURT OF FLORIDA

Case No. 41,199

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, a labor organization, and as an unincorporated association, by and through JOHN H. SEA, business representative thereof; and CARPENTERS LOCAL UNION NO. 627, a labor organization, and as an unincorporated association, by and through EARL S. HUFF, assistant business representative thereof,

Petitioners,

vs.

THE HONORABLE ROGER J. WAYBRIGHT, as Circuit Judge of the Fourth Judicial Circuit, in and for Duval County, Florida,

Respondent.

PETITION FOR REHEARING

COMES NOW William E. Arnold Company, by and through its undersigned attorneys, and hereby petitions the Court for rehearing pursuant to Rule 3.14, Florida Appellate Rules, on the following grounds:

The Opinion of the Court was rendered on April 18, 1973. In its Opinion, the Court held that a strike which is a contract breach, and also arguably an unfair labor practice, cannot be enjoined by the State courts. In so holding, the Court concluded that the National Labor Relations Board was vested with exclusive jurisdiction. By concluding that the NLRB has *exclusive* jurisdiction in cases such as this, the Court apparently overlooked or failed to consider the following:

(a) In its Opinion, at page 3, the Court, in the case *sub*

judice, stated that "* * * The decisive issue is whether or not the activity enjoined is arguably an unfair labor practice, not whether it is also a breach of contract." This same conclusion was originally adopted by the Supreme Court of Michigan in a breach of collective bargaining contract suit initially brought in state court in the case of *Smith v. Evening News Association*, 106 N.W.2d 785 (Mich. Sup. Ct. 1961), *rev'd* in 371 U.S. 195 (1962). The decision of the Supreme Court of Michigan was subsequently reversed by the United States Supreme Court, which expressly held:

> "In Lucas Flour as well as in Atkinson, the Court expressly refused to apply the pre-emption doctrine of the Garmon case; and *we likewise reject that doctrine here where the alleged conduct of the employer, not only arguably, but concededly, is an unfair labor practice within the jurisdiction of the National Labor Relations Board. The authority of the Board to deal with an unfair labor practice which also violates a collective bargaining contract is not displaced by §301, but it is not exclusive and does not destroy the jurisdiction of the courts [state and federal] in suits under Section 301.*" (Emphasis added.) 371 U.S. 195.

(b) The Court apparently misconstrued and overlooked the rationale underlying the decision rendered in *Radio Corporation of America v. Local 780*, 160 So.2d 150 (2nd DCA Fla. 1964) as is indicated by the Court's Opinion at page 3 which states that "***in Radio Corporation of America v. Local 780, International Alliance of Theatrical Employees, AFL-CIO, 160 So.2d 150 (Fla. App. 2d 1964), *cert. denied*, 169 So.2d 390 (Fla. 1964); *cert. denied*, 380 U.S. 973 (1965), relied

upon by the District Court, there was no allegation that the strike enjoined constituted an unfair labor practice as well as a breach of contract." In the *RCA* case, *supra*, the unions which had been enjoined from violating the no-strike agreements between the parties did in fact raise the claim that their activities were either arguably protected and/or prohibited by the National Labor Relations Act, and that, therefore State court jurisdiction had been federally pre-empted by the National Labor Relations Board, 160 So.2d at 152-154. This claim of pre-emption was rejected by the Second District Court of Appeal which specifically relied upon the United States Supreme Court's decisions rendered in *Smith v. Evening News Association, supra*, and *Charles Dowd Box Company v. Courtney*, 368 U.S. 502 (1962).

(c) In reaching the conclusion that "***in cases such as this one, where the National Labor Relations Board has exclusive jurisdiction because of the unfair labor practice involved ***" (see page 3 of Opinion), the Court apparently overlooked the case of *Collyer Insulated Wire*, 192 NLRB No. 150 (1971). In *Collyer, supra*, the Board, relying in part on *Smith v. Evening News Association, supra*, recognized that its jurisdiction over unfair labor practices was concurrent with that of the courts where the unfair labor practice was also a breach of contract. The Board pointed out that this concept of *concurrent* rather than exclusive jurisdiction was consistent with the national labor policy whereby the preferred method for settling disputes is by the method agreed upon by the parties in their collective bargaining agreements. 29 U.S.C. §173(d).

For the foregoing reasons, William E. Arnold Company

respectfully moves that the Petition for Rehearing be granted, that the Court's Opinion dated April 18, 1973, be vacated and that the Petition for Writ of Certiorari be dismissed and discharged.

Respectfully submitted,

COFFMAN & JONES
Post Office Box 40089
Jacksonville, Florida 32203

By /s/ Daniel R. Coffman, Jr.

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a copy of the foregoing Petition for Rehearing has been furnished this 1st day of May, 1973, by United States first class mail to Lacy Mahon, Jr., Esquire, Mahon & Mahon, 77 Washington Street, Jacksonville, Florida 32202, and The Honorable Roger J. Waybright, Fourth Judicial Circuit, Duval County Courthouse, Duval County, Florida.

/s/ Daniel R. Coffman, Jr.
Attorney

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

..... TERM, 1971

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, a labor organization, and as an unincorporated association, by and through JOHN H. SEA, business representative thereof; and CARPENTERS LOCAL UNION NO. 627, a labor organization, and as an unincorporated association, by and through EARL S. HUFF, assistant business representative thereof,

Petitioners,

vs.

THE HONORABLE ROGER J. WAYBRIGHT, as Circuit Judge of the Fourth Judicial Circuit, in and for Duval County, Florida,

Respondent.

PETITIONER'S REPLY TO
RESPONDENT'S PETITION FOR REHEARING

MAHON & MAHON
77 Washington Street
Jacksonville, Florida 32202
Attorneys for Petitioners

PETITIONER'S REPLY TO
RESPONDENT'S PETITION FOR REHEARING

Petitioner would submit that Respondent's Petition for Rehearing should be stricken or denied.

Rule 3.14(b), Florida Appellate Rules, provides as follows:

"Contents of Petition. The petition for rehearing shall

> not assume a new ground or position from that taken in the original argument or briefs upon which the cause was submitted, and must set forth concisely, *and without argument*, the alleged omissions, oversights, causes, or grounds on which it is based." (emphasis added)

And, in Section (d) of the aforesaid rule, is provided:

> "Rule Violation. In case of a substantial violation of any material provision of this rule, the petition will be stricken by the Court on its own motion and the contents will not be considered."

These particular provisions have been construed very strongly by the Courts of our state for many years. See Authors' Comment, Florida Statutes Annotated, Appellate Rules, Rule 3.14. This Court itself has in numerous cases applied these rules to petitions for rehearing, and stated in *Payne v. Ivey*, 93 So 143 (Fla. Sup. Ct. 1922) at page 148:

> "The proper function of a petition for rehearing is to present to the Court in clear, concise terms some material point that the Court overlooked or failed to consider, only this and nothing more.
>
> "This Court has held also that the following are violations of the rule that will cause dismissal of the application for rehearing, viz.: (1) To accompany the petition with, or to include therein, a written argument and citation of authorities; (2) joining issue with the Court in such application, as to the correctness of its conclusions upon points involved in its decision that were expressly considered and passed upon; and (3) an application for rehearing that re-argues the cause in advance of a permit from the Court for such rehearing."

And, more recently, this Court held in *Diamond Cab Co. of Miami v. King*, 146 So2d 889 (Fla.Sup.Ct. 1962) on page 891, the following:

> "The purpose of a petition for rehearing is merely to bring to the attention of the trial court, or in this instance, the administrative agency, some point which it overlooked or failed to consider when it rendered its order in the first instance. (citing cases) It is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the order."

In the case at bar, petitioner would submit that with all due respect, the petition for rehearing filed by the respondent violates all of these prohibitions. Respondent has turned its petition for rehearing into a small brief re-arguing its position, similar to the numerous amicus curiae briefs filed in the cause.

For these reasons, petitioner would submit the petition for rehearing should be stricken.

Furthermore, it is apparent that both the petition for rehearing and the various amicus curiae briefs filed in this cause merely present re-argument on cases relied on in the jurisdictional and main brief filed by respondent, and argued by respondent to this Court orally.

The main concern of the respondent seems to be that of *Smith v. Evening News Association*, 371 U.S. 195 (1962). This case has been argued to the Court in both briefs previously filed by the respondent. It was decided *eight* years prior to this Court's decision in *Sheetmetal Workers International Association v. Florida Heat and Power*, 230 So2d 154.

The case is distinguishable from the case at bar in several respects. It was a suit for damages brought under §301 of the Taft-Hartley Act, and no question of injunctive relief even entered the suit. This is an extremely important distinction in view of the anti-injunctive language of the Norris - La Guardia Act, severely restricting Federal Courts' power to enjoin in labor disputes. It is submitted that *Smith v. Evening News* was considered carefully by this Court, and its meaning was not misconstrued.

Another point raised by respondent, which had also been raised and argued previously, was that this court overlooked the rationale of *Radio Corporation of America v. Local 780*, 160 So2d 150 (2nd DCA, 1964) decided six years prior to *Sheetmetal* supra. This is just not so, because this Court is correct in its observation that there was no allegation of unfair labor practice in that case. Furthermore, it does not appear that that case involved an unfair labor practice.

Petitioner would submit that this Court correctly decided *Scherer and Sons, Inc. v. International Ladies Garment Workers Union Local 415*, 142 So2d 290, *Sheetmetal*, supra, and the case at bar. The petition for rehearing should be dismissed.

Respectfully submitted,

MAHON & MAHON

By /s/ Lacy Mahon, Jr.
Lacy Mahon, Jr.
77 Washington Street
Jacksonville, Florida 32202
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a copy of the foregoing Petitioner's Reply to Respondent's Petition for Rehearing has been furnished to COFFMAN & JONES, Esquires, Attorneys for William E. Arnold Company, 1061 Riverside Avenue, Jacksonville, Florida 32204, by US Mail, this 18th day of May, A.D. 1973.

MAHON & MAHON

By /s/ Lacy Mahon, Jr.
Lacy Mahon, Jr.
77 Washington Street
Jacksonville, Florida 32202
Attorneys for Petitioner

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In The Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-466

WILLIAM E. ARNOLD COMPANY,
a Florida corporation,

Petitioner,

v.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH JOHN H. SEA, BUSINESS REPRESENTATIVE THEREOF; AND CARPENTERS LOCAL UNION NO. 627, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH EARL S. HUFF, ASSISTANT BUSINESS REPRESENTATIVE THEREOF,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

J. P. JONES
of
COFFMAN & JONES
Post Office Box 40089
Jacksonville, Florida 32203

Attorneys for Petitioner

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In The
Supreme Court of the United States

OCTOBER TERM, 1973

No. _____

WILLIAM E. ARNOLD COMPANY,
a Florida corporation,

Petitioner,

v.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH JOHN H. SEA, BUSINESS REPRESENTATIVE THEREOF; AND CARPENTERS LOCAL UNION NO. 627, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH EARL S. HUFF, ASSISTANT BUSINESS REPRESENTATIVE THEREOF,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petitioner prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of Florida dated April 18, 1973.

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of Florida is reported at 279 So.2d 300 and is printed in the Appendix at p. 8a. The opinion of the District Court of Appeal of Florida, First District, is reported at 248 So.2d 179 (1st DCA Fla. 1971) and is printed in the Appendix at p. 3a. The Supreme Court of Florida's Order denying a timely Petition for Rehearing was entered on July 20, 1973, and is printed in the Appendix at p. 15a.

JURISDICTION

The judgment of the Supreme Court of Florida was entered on April 18, 1973. A timely Petition for Rehearing was denied on July 20, 1973. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1257(3), 2101(c).

QUESTION PRESENTED FOR REVIEW

Whether the state courts have jurisdiction to enjoin the breach of a no-strike clause contained in a collective bargaining agreement where the breach arguably involves an unfair labor practice.

CONSTITUTIONAL PROVISION INVOLVED

Article VI, Clause 2:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law

of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary, notwithstanding."

STATUTES INVOLVED

1. Section 203(d) of the National Labor Relations Act, as amended, 29 U.S.C. §173(d):

> "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes over the application or interpretation of an existing collective-bargaining agreement. . . ."

2. Section 301(a) of the National Labor Relations Act as amended, 29 U.S.C. §185(a):

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT OF THE CASE

The William E. Arnold Company is an "employer" within the meaning of §152(2) of the National Labor Relations Act, as amended (hereinafter referred to as the "Act"). The Carpenters District Council of Jacksonville and Vicinity and Carpenters Local Union No. 627 are labor organizations within

the meaning of §152(5) of the Act. The William E. Arnold Company originally brought suit under §301 of the Act in the Fourth Judicial Circuit Court in and for Duval County, Florida, seeking an injunction prohibiting the unions from violating a "no-strike" provision contained in a collective bargaining agreement entered into by the unions and the William E. Arnold Company. The no-strike provision in question read as follows:

Article VI

> "There shall be no work stoppage, slowdown, work cessation or strike because of a jurisdictional dispute. A mutually agreeable settlement, or joint decision of the international unions involved, or decision or interpretation of the National Joint Board for Settlement of Jurisdictional Disputes (or Hearing Panel) shall be binding and all parties agree to accept such decision or interpretation."

On April 23, 1971, a temporary restraining order was issued by the Honorable Roger J. Waybright, Circuit Judge in and for Duval County, Florida, prohibiting further breaches of the no-strike promise contained in the collective bargaining agreement.[1/] The unions then filed a Writ of Prohibition with the District Court of Appeal of Florida, First District, alleging that since the contract violation was also an unfair labor practice under the Act, 29 U.S.C. §158(b)(4)(i)(D), the Circuit Court of Duval County had no jurisdiction to remedy the contract breach. The Florida District Court of Appeal, in a decision rendered on May 10, 1971, upheld the Duval County Circuit Court's assumption of jurisdiction and denied

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1/ A true copy of the trial court's Order has been reproduced in the Appendix at p. 1a.

the unions' suggestion for Writ of Prohibition. *See* 248 So.2d 179 (1st DCA Fla. 1971); Appendix at p. 3a.

The unions then filed a Petition for Writ of Certiorari with the Supreme Court of Florida. Certiorari was granted and the Supreme Court of Florida entered its opinion and judgment on April 18, 1973, vacating the decision of the Florida District Court of Appeal. In its opinion, the Supreme Court of Florida held that since the unions' contract breach arguably involved an unfair labor practice, that the National Labor Relations Board had exclusive jurisdiction and the state courts had been preempted of their jurisdiction to enjoin the contract breach. 279 So.2d 300, Appendix at p. 8a.

The William E. Arnold Company, thereafter, timely filed a Petition for Rehearing with the Supreme Court of Florida in which it was alleged that the Court below apparently overlooked or failed to consider prior decisions of both this Court and the National Labor Relations Board which had expressly rejected the claim of preemption where a contract breach also arguably involved an unfair labor practice. *See Smith v. Evening News Association*, 371 U.S. 195, 83 S.Ct. 267, 9 L.Ed. 2d 246 (1962); *Collyer Insulated Wire*, 192 NLRB No. 150, 77 LRRM 1931 (1971). Various local chapters of the Associated General Contractors of America, the Florida State Chamber of Commerce, and numerous other employers having collective bargaining agreements in the State of Florida, filed amicus curiae briefs in support of the Petition for Rehearing. On July 20, 1973, in a 4 to 3 decision, the Supreme Court of Florida denied the Petition for Rehearing. Appendix at p. 15a.

REASONS FOR GRANTING THE WRIT

The opinion of the Court below violates the Supremacy Clause of the Constitution because it frustrates the national labor policy governing the collective bargaining process, grievance-arbitration enforcement and uniformity in substantive labor law between state and federal courts.

A. THE OPINION OF THE COURT BELOW CONFLICTS WITH AND UNDERMINES THE NATIONAL LABOR POLICY PREVIOUSLY ESTABLISHED BY THIS COURT IN *SMITH V. EVENING NEWS ASSOCIATION*, 371 U.S. 195 (1962).

It is well settled that both the state and federal courts have jurisdiction over actions to enforce collective bargaining agreements. *See e.g. Charles Dowd Box Company v. Courtney*, 368 U.S. 502, 82 S.Ct. 519, 7 L.Ed.2d 483 (1962). In such cases, state law may be applied only to the extent that it is compatible with the purpose of §301(a) of the Act, and where state law is applied, it is absorbed into federal law. *See Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957). In essence, state courts enforcing collective bargaining agreements must apply federal substantive law under §301 of the Act. *Textile Workers Union v. Lincoln Mills, supra; Charles Dowd Box Company v. Courtney, supra; Teamsters Local 174 v. Lucas Flour Co.*, 369 U.S. 95, 82 S.Ct. 571, 7 L.Ed.2d 593 (1962); U.S. Const. Article VI, Clause 2.

In the case at bar, the Court below was faced with the question of whether a state court loses its jurisdiction to enforce a collective bargaining agreement where the alleged breach of the agreement also involves an unfair labor practice. This same question was posed before the Supreme Court

of Michigan in *Smith v. Evening News Association*, 106 N.W. 2d 785, 362 Mich. 350 (Mich. 1961). In the *Smith* case, *supra*, the Supreme Court of Michigan affirmed a Michigan circuit court's dismissal of an action to enforce a collective bargaining agreement, holding that where the contract breach also involved an unfair labor practice the subject matter of the suit was within the exclusive jurisdiction of the National Labor Relations Board (hereinafter referred to as "NLRB"). The Michigan Supreme Court observed in the *Smith* case, *supra*, that the key issue before the court was whether the employer's alleged breach of contract was also an unfair labor practice.

On certiorari, the Supreme Court of the United States *reversed* the Michigan state court, holding that the suit filed in the Michigan circuit court actually arose under §301 of the Act and that the jurisdiction of the state courts of Michigan to enforce the collective bargaining agreement was not preempted by the NLRB. *Smith v. Evening News Association*, 371 U.S. 195. In so holding, this Court in the *Smith* case, *supra*, stated:

> *"The authority of the Board [NLRB] to deal with an unfair labor practice which also violates a collective bargaining contract* is not displaced by §301, but *it is not exclusive and does not destroy the jurisdiction of the courts in suits under §301."* (Emphasis added.) 371 U.S. at 197.[2/]

In direct contradiction of the above holding of this Court, the Court below held in the case *sub judice* that state court

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2/ See also the text of "Arbitration And/Or the NLRB," a speech given by former NLRB Chairman Frank W. McCulloch February 1, 1963, wherein he discussed the application of the *Smith* case, *supra*, at 52 LRRM 92.

jurisdiction to enforce a collective bargaining agreement is preempted by the NLRB where federally prohibited practices are involved.

> *"It is unquestionable that state courts do have jurisdiction to enforce a collective bargaining agreement and to enjoin a strike in violation of a 'no-strike' clause* contained therein, *but not when the strike is also arguably an unfair labor practice* prohibited by federal law. . . . *The decisive issue is whether or not the activity enjoined is arguably an unfair labor practice, not whether it is also a breach of contract."* (Emphasis supplied.) Florida Supreme Court Opinion at 279 So.2d 302; Appendix at p. 10a.

The national labor policy previously established by this Court in *Smith v. Evening News*, and *Dowd Box*, was reaffirmed in *Amalgamated Association of Street, Electric Railway and Motor Coach Employees v. Lockridge*, 403 U.S. 274, 91 S.Ct. 1909, 29 L.Ed.2d 473 (1971) where the Court noted:

> "In Section 301 of the Taft-Hartley Act, Congress authorized federal courts to exercise jurisdiction over *suits to enforce collective bargaining agreements.* We have held that *such actions are judicially cognizable, even where the conduct alleged was arguably protected or prohibited by the National Labor Relations Act because the history of the enactment of Section 301 reveals that 'Congress deliberately chose to leave the enforcement of collective agreements to the usual processes of law.' Charles Dowd Box Company v. Courtney*, 368 U.S. 502, 513, 49 LRRM 2619 (1962). *It is firmly established, further, that state courts retain concurrent jurisdiction to adjudicate such claims, Charles Dowd Box Company, supra,* and that individual employees have

standing to protect rights conferred upon them by such agreements, *Smith v. Evening News, supra; Humphrey v. Moore*, 375 U.S. 335." (Emphasis supplied.) *Id.* at 403 U.S. 298.

Prior decisions of this Court have made it abundantly clear that state court jurisdiction over actions involving the breach of a collective bargaining agreement, even though the breach arguably may involve an unfair labor practice, has not been preempted by the National Labor Relations Board. The decision of the Court below patently conflicts with and undermines the expressed pronouncements of this Court.

B. THE COLLECTIVE BARGAINING PROCESS IS THE PREFERRED METHOD FOR SETTLEMENT OF GRIEVANCE DISPUTES OVER THE APPLICATION OR INTERPRETATION OF AN EXISTING COLLECTIVE BARGAINING AGREEMENT.

The ultimate effect of the Supreme Court of Florida's decision is to undermine the national labor policy by denying parties to collective bargaining agreements access to the state court system for enforcing their agreements. The no-strike promise on the part of the union is the *quid pro quo* for the grievance arbitration machinery in the collective bargaining process. *Textile Workers v. Lincoln Mills, supra.* In the Court's opinion below, the no-strike promise, which lies at the very heart of industrial peace, is rendered meaningless and unenforceable in the Florida state courts. If the opinion below is allowed to stand, industrial warfare may very well take the place of grievance-arbitration procedures. Such a result would fly in the face of the national labor policy which this Court, the Congress and the National Labor Relations Board have adopted. *E.g. Boys Markets, Inc. v. Retail Clerks*, 398 U.S.

235, 90 S.Ct. 1583, 26 L.Ed.2d 199 (1970); 29 U.S.C. §173(d); *Collyer Insulated Wire*, 192 NLRB No. 150 (1971).

In enacting Section 301 of the Act, Congress did more than confer jurisdiction in the federal courts over labor organizations. It expressed a national policy that collective bargaining agreements should be enforced by the courts on behalf of or against labor organizations. *Textile Workers v. Lincoln Mills, supra.* Enforcement of this national labor policy will promote a higher degree of responsibility upon the parties to collective bargaining agreements and will thereby promote industrial peace. The decision of the state court below can only serve to undermine the national labor policy and will have a crippling effect on grievance-arbitration. *Cf. Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed.2d 1403 (1960).

The National Labor Relations Board has expressly recognized that it has *concurrent* jurisdiction with the courts over actions concerning the breach of a collective bargaining agreement which also arguably involve an unfair labor practice. *Collyer Insulated Wire, supra.* The National Labor Relations Board has adopted a policy in which it will initially defer its jurisdiction over collective bargaining agreement disputes to the procedure agreed upon by the parties in their collective bargaining agreement. This policy of deferring jurisdiction is consistent with the national labor policy established by Congress in §203(d) of the Act, to wit:

> "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes over the application or interpretation of an existing collective-bargaining agreement. . . ."

In the case at bar the parties have expressly agreed in their collective bargaining agreement that jurisdictional disputes are to be settled peaceably and without resort to strike. Although the expressed contract intent of the parties is the preferred method for settling labor disputes under our national labor policy, that method has been undercut by the decision of the Court below.

C. THE OPINION OF THE COURT BELOW IS IN DIRECT CONFLICT WITH THE FEDERAL POLICY OF LABOR LAW UNIFORMITY BETWEEN FEDERAL AND STATE COURTS ESTABLISHED BY THIS COURT IN *BOYS MARKETS, INC. V. RETAIL CLERKS*, 398 U.S. 235 (1970).

The Court below has ruled that state court injunctive relief in the grievance-arbitration context of the collective bargaining process will not be available to either employers or unions whenever the breach sought to be enjoined arguably involves an unfair labor practice.[3/] The rationale of this decision will engender rampant forum shopping and maneuvering from one court to another and destroy relative uniformity in the enforcement of arbitration agreements. This is precisely the situation which this Court sought to remedy in *Boys Markets, Inc. v. Retail Clerks, supra*, where the Court pointed out that injunctive relief to enforce a no-strike obligation should be available in *both* state and federal courts:

> ". . . The injunction, however, is so important a remedial device, particularly in the arbitration context, that its availability or nonavailability in various courts

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3/ It is highly probable that every breach of a collective bargaining agreement may "arguably involve an unfair labor practice." *See* §§8(a)(5), 8(b)(3), 8(d) of the Act; *Collyer Insulated Wire, supra.*

> will not only produce rampant forum shopping and maneuvering from one court to another, but will also greatly frustrate any relative uniformity in the enforcement of arbitration agreements." 398 U.S. at p. 246.

The national policy of labor law uniformity[4/] between federal and state courts and the criteria governing the availability of equitable remedies to enforce arbitration agreements and no-strike obligations has been destroyed by the decision of the Court below. Our national labor policy is directed toward the goal of settling disputes by an agreed upon peaceful method, 29 U.S.C. §173(d). The nonavailability of injunctive relief in the Florida state courts renders the potentially peaceful arbitration process meaningless and ineffectual.

4/ *Also see Teamsters Local 174 v. Lucas Flour Co., supra.*

CONCLUSION

The decision of the Court below flies in the face of national labor policy governing the collective bargaining process, grievance-arbitration enforcement and uniformity in substantive labor law between state and federal courts. For these and the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

COFFMAN & JONES
Post Office Box 40089
Jacksonville, Florida 32203

Attorneys for Petitioner

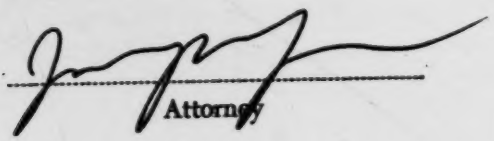
By J. P. Jones

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing Petition for a Writ of Certiorari to the Supreme Court of Florida have been furnished by United States first class mail on this 10th day of September, 1973, to the following:

Mahon & Mahon
77 Washington Street
Jacksonville, Florida 32202

Attorneys for Respondents



Attorney

APPENDIX

IN THE
CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

Case No. 71-3623 - Division B

WILLIAM E. ARNOLD COMPANY,
a Florida corporation,

Plaintiff,

v.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, a labor organization, and as an unincorporated association, by and through JOHN H. SEA, business representative thereof; and CARPENTERS LOCAL UNION NO. 627, a labor organization, and as an unincorporated association, by and through EARL S. HUFF, assistant business representative thereof,

Defendants.

ORDER

THIS CAUSE coming on to be heard on Plaintiff's sworn bill of Complaint and upon its application for a Temporary Restraining Order, and after telephoned notice a hearing having been held at which the Defendants' attorney was present and sworn testimony and other evidence was received, and it appearing that the injuries apprehended will be done if an immediate remedy is not afforded, and that, therefore, Plaintiff is entitled to a Temporary Restraining Order herein, it is therefore,

ORDERED, that pending further order of this Court herein:

The Defendants, and each of them and their officers, agents, members, servants, employees, attorneys, and representatives, and those persons in active concert or participation with them, and all persons having knowledge of the Court's Order, be immediately restrained and enjoined from:

(a) Causing, inducing, participating in or aiding any refusal to work for Plaintiff at the Jacksonville General Hospital, 4901 Richard Street, Jacksonville, Florida, in violation of Article VI of the collective bargaining Agreement between the parties dated May 1, 1968.

(b) Committing, doing, or uttering any act, word or deed, written, spoken or performed, singularly or in concert, which is intended, designed or calculated, to induce, persuade, order, cause or bring about any breach of Article VI of the aforesaid collective bargaining Agreement between Defendant Unions and Plaintiff, or which is intended, designed or calculated to induce, persuade, order, cause or bring about any work stoppage by or on the part of any person in violation of Article VI of the aforesaid Agreement.

(c) Taking any other action whatsoever for the purpose of causing any such breach of contract or work stoppages in violation of Article VI of said Agreement.

This Temporary Restraining Order shall become of full force and effect upon the Plaintiff giving bond as required by law in the sum of $5,000.00, and approved by the Court or its Clerk and upon the giving and approving of said bond, such approval to be endorsed hereon.

ORDERED IN Jacksonville, Duval County, Florida, this 23rd day of April, 1971.

/s/ Roger J. Waybright
Judge

IN THE
DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

JANUARY TERM, A. D. 1971.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND DISPOSITION THEREOF IF FILED.

Case No. P-196

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, a labor organization, and as an unincorporated association, by and through JOHN H. SEA, business representative thereof; and CARPENTERS LOCAL UNION NO. 627, a labor organization, and as an unincorporated association, by and through EARL S. HUFF, assistant business representative thereof,

Relators,

v.

THE HONORABLE ROGER J. WAYBRIGHT, as Circuit Judge of the Fourth Judicial Circuit, in and for Duval County, Florida,

Respondent.

Opinion Filed May 10, 1971.

A Suggestion for Writ of Prohibition. Original Jurisdiction.

Lacy Mahon, Jr. of Mahon & Mahon, for Relators.

Coffman & Jones, for Respondent.

SPECTOR, J.

Relators have filed a suggestion for writ of prohibition to restrain the respondent circuit judge from exercising any

further jurisdiction respecting an action presently pending before the respondent judge on the ground that the subject matter of the said pending action is outside the jurisdiction of the respondent judge. We have examined allegations of the suggestion herein, together with the applicable principles of law advanced by respective counsel in their briefs and arguments, and hold that the respondent is not without jurisdiction in the premises. Accordingly, the suggestion for writ of prohibition is denied.

In the action pending before the respondent, a temporary restraining order was entered against relators in a suit filed against them by a general contractor to enjoin relators from violating a "no-strike" provision of a collective bargaining agreement entered into between the contractor and the relators. The contractor alleged in its suit for injunction that the relators went on strike in violation of the "no-strike" clause of their collective bargaining agreement because of a jurisdictional dispute between relators and a subcontractor and another union.

Relators contend here that the respondent had no jurisdiction since their strike was over conduct constituting an unfair labor practice under Title 29, Labor, §158(b)(4)(i)(D), United States Code Annotated, and thus is within the exclusive jurisdiction of the National Labor Relations Board. We do not quarrel with relators' contention that the conduct they complain of and which prompted their strike relates to an unfair labor practice within the cited law. But, the question before us in this proceeding is whether a state court has jurisdiction to restrain the breach of a "no-strike" clause in a collective bargaining agreement where said agreement expressly specifies a method for resolving jurisdictional disputes. In a prohibition action, we are not concerned with the

correctness of the trial court's ruling – only with the power or authority to assume jurisdiction.

Relators rely on Sheetmetal Workers Int. Ass'n. v. Florida Heat and Power, Inc., 230 So.2d 154 (Fla. 1970), for the proposition that Florida state courts have no jurisdiction to enjoin union activities, including the strike herein, which arguably comes within the jurisdiction of the National Labor Relations Board. Also relied upon is Scherer & Sons, Inc. v. International Ladies Garment Workers Union Local 415, 142 So.2d 290 (Fla. 1962). The Sheetmetal Workers case is factually distinguishable from the case at bar. There, no collective bargaining agreement existed between the parties which contained a "no-strike" clause. Here, there is such an agreement. In Sheetmetal Workers, there being no contract, the parties had not agreed to arbitrate their differences as to jurisdictional disputes before the National Joint Board for Settlement of Jurisdictional Disputes. In the case at bar, the parties had agreed to resort to that forum for settlement of such disputes. The Scherer case, supra, is equally inapplicable. That was a suit to enjoin alleged restraint of trade practices by the defendant union under Chapter 542, Florida Statutes. The court held that the union's activities there constituted unfair labor practices under the federal labor laws and were therefore within the jurisdiction of the National Labor Relations Board and not the state court's jurisdiction. As in the Sheetmetal Workers case, however, the parties to the action had not entered into a binding agreement whereunder they had agreed to submit their grievances to a designated forum as is the case herein.

We think the question raised by relators is answered adversely to them in Radio Corporation of America v. Local 780 International Alliance of Theatrical Employees, AFL-CIO, 160 So.2d 150 (Fla. App. 1964). In that case, the employer, Radio

Corporation of America, brought an action in the state court to enforce a no-strike, no-picketing provision of a collective bargaining agreement. On appeal from the trial court's ultimate ruling dissolving an earlier temporary restraining order, the appellate court was confronted directly with the question of whether a state court had authority to grant an injunction against a violation of a no-strike provision of a collective bargaining agreement. The court, following decisions in New York and California, Perry v. Robilotto, 240 N.Y.S. 2d 331 (S. Ct. 1963), and Gage Plumbing Supply v. Local 300, International Hod Carriers Union, 202 Cal.App.2d 197 (1962), held that state courts do have the authority to enjoin violations or breaches of no-strike provisions of collective bargaining agreements. In RCA, supra, the court rejected the union's contention that jurisdiction in labor matters of this type were pre-empted by the federal law. The relators herein advance similar contentions as those rejected by the court in RCA, buttressed however by our Supreme Court's decision in the Sheetmetal Workers case, supra.

Relators' argument that the jurisdictional dispute which has arisen between their unions and the contractors and the competing union is properly justiciable by the National Labor Relations Board and not the state courts seems also to be refuted by a decision of the National Labor Relations Board in Laborer's Local 670, 189 NLRB No. 98, 76 LRRM 1794 (April 12, 1971), holding that where the parties have arrived on a method for voluntary adjustment of a union's claim to disputed work to be bound by procedures of the National Joint Board for Settlement of Jurisdictional Disputes, the parties are required to resolve jurisdictional disputes through joint board procedures. As noted above, the collective bargaining agreement in the case sub judice contains a similar provision for resolving jurisdictional disputes through Joint Board procedures.

A recent decision of the United States Supreme Court, Boys Markets v. Retail Clerks Union, 398 U.S. 235, 26 L.Ed.2d 199, 90 S. Ct. 1583, makes it clear that the state and federal courts have concurrent jurisdiction to enforce no-strike provisions contained in collective bargaining agreements, notwithstanding the provisions of Section 301(a) of the Labor Management Relations Act of 1947. However, the court recognized in the Boys Market case that when suits are filed in state courts to enforce no-strike clauses, such suits may be removed to federal district courts pursuant to 28 U.S.C., Section 1441. In Boys Market, the court held at 398 U.S. 254 as follows:

> ". . . When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract *does* have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. . . ."

The foregoing authorities make it amply clear that state courts do have concurrent jurisdiction to enforce a no-strike clause in a collective bargaining agreement. While we so hold, thus requiring denial of relators' suggestion for a writ of prohibition, we do not necessarily hold that the temporary restraining order entered in the case pending before the respondent is free from error by reason of the court's failure to include therein an order directing the plaintiff-employer and the relator-union to arbitrate or submit their grievances to the joint board for expeditious resolution. While the failure to so direct may affect the correctness of the temporary restraining order, that is a matter not going to the jurisdiction of the respondent court. Rather, it is a matter which is sub-

ject to being reviewed by interlocutory appeal in this court or on review from final judgment in the event the parties should elect to litigate further in the lower court.

CARROLL, Donald, ACTING CHIEF JUDGE; and WIGGINTON, J., CONCUR.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DETERMINED.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1973

Case No. 41,199

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, a labor organization, and as an unincorporated association, by and through JOHN H. SEA, business representative thereof; and CARPENTERS LOCAL UNION NO. 627, a labor organization, and as an unincorporated association, by and through EARL S. HUFF, assistant business representative thereof,

Petitioners,

v.

THE HONORABLE ROGER J. WAYBRIGHT, as Circuit Judge of the Fourth Judicial Circuit, in and for Duval County, Florida,

Respondent.

Opinion filed April 18, 1973

Writ of Certiorari to the District Court of Appeal, First District

Lacy Mahon, Jr. of Mahon and Mahon, for Petitioners

Daniel R. Coffman, Jr. of Coffman and Jones, for Respondent

McCAIN, J.

By petition for writ of certiorari we have for review a decision of the District Court of Appeal, First District, reported at 248 So. 2d 179, which conflicts with Sheetmetal Workers' International Association, Local Union No. 223 v. Florida Heat and Power, Inc., 230 So. 2d 154 (Fla. 1970). We have jurisdiction pursuant to Fla. Const., Article V, §3(b)(3).

The William E. Arnold Company, a general contractor, filed suit against petitioners in the Circuit Court of Duval County, to enjoin them from violating a "no-strike" provision of a collective bargaining agreement entered into between the contractor and petitioners. The Circuit Court, Judge Waybright presiding, agreed with the contentions of the contractor and entered a temporary restraining order against petitioners.

Petitioners sought prohibition in the District Court of Appeal, First District, arguing that the Circuit Court had no jurisdiction since the strike constituted an unfair labor practice within the purview of Title 29, Labor, §158(b)(4)(i)(D), United States Code Annotated, and was thus within the exclusive jurisdiction of the National Labor Relations Board. Petitioners relied on *Sheetmetal Workers' International Asso-*

ciation v. Florida Heat and Power, Inc., supra, to support their argument.

In *Sheetmetal Workers'*, this Court held that state court jurisdiction to enjoin labor activities is pre-empted when federally-protected or prohibited practices are involved, and that these activities are within the exclusive jurisdiction of the National Labor Relations Board. Two exceptions were noted: where there is violence or where there is an affront to the state's right-to-work policy, state courts may enjoin even those activities which would otherwise be within the National Labor Relations Board's exclusive jurisdiction. We also held that if a case is arguably subject to exclusive National Labor Relations Board jurisdiction, the Board, and not the state court, must initially determine its jurisdiction. In *Sheetmetal Workers'* the labor activities enjoined were arguably federally-prohibited unfair labor practices, and the case did not fall within the exceptions noted to the above-stated rules. We held, therefore, that our state courts did not have jurisdiction to enjoin the activities.

In the case at bar, the First District Court denied the suggestion for writ of prohibition, distinguishing *Sheetmetal Workers'* on the basis that it did not involve a collective bargaining agreement which contained a "no-strike" clause. In our judgment, this is not a sufficient basis for departing from the rationale and decision in Sheetmetal Workers'.

It is unquestionable that state courts do have jurisdiction to enforce a collective bargaining agreement and to enjoin a strike in violation of a "no-strike" clause contained therein, but not when the strike is also arguably an unfair labor practice prohibited by federal law. In Radio Corporation of America v. Local 780 International Alliance of Theatrical Employees, AFL-CIO, 160 So. 2d 150 (Fla. App. 2d, 1964),

relied on by the District Court, there was no allegation that the strike enjoined constituted an unfair labor practice as well as a breach of contract. In Boys Market v. Retail Clerks Union, 398 U.S. 235 (1970), also cited by the District Court, there was likewise no unfair labor practice involved. It is these cases which should have been distinguished from the case at bar, not *Sheetmetal Workers'*. The decisive issue is whether or not the activity enjoined is arguably an unfair labor practice, not whether it is also a breach of contract.

In cases such as this one, where the National Labor Relations Board has exclusive jurisdiction because of the unfair labor practice involved, the Board may decline to assume jurisdiction either by rule of decisions or by published rules adopted pursuant to the Administrative Procedure Act, after which state courts may then assume jurisdiction.[1] In our view, the National Labor Relations Board decision cited by the District Court,[2] does not have the effect of declining jurisdiction. In that case the Board held only that it cannot decide disputes over union jurisdiction when the parties have agreed to arbitrate those disputes. The case does not hold that the Board cannot or would not 1) order the parties to arbitrate as agreed, or 2) issue a cease and desist order against a federally prohibited strike arising out of the dispute.

Sub judice, since the strike enjoined by the Circuit Court appears to have been, at least arguably, a federally prohibited unfair labor practice, and since the National Labor Relations Board has not abdicated its exclusive jurisdiction in cases of this type, we hold that the rule of law enunciated in *Sheetmetal Workers'* applies and that the District Court

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1. Title 29, Labor, §164(c), United States Code Annotated.

2. Laborer's Local 670, 189 NLRB 98, 76 LRRM 1794 (April 12, 1971).

erred in failing to prohibit the further exercise of jurisdiction by the Circuit Court. Accordingly, the decision of the District Court of Appeal, First District, is vacated and the cause is remanded to that Court for further proceedings not inconsistent with the decision herein.

It is so ordered.

CARLTON, C.J., ERVIN, ADKINS and BOYD, JJ., Concur

DEKLE, J., Dissents with Opinion

DREW, J. (Retired) Dissents and Concurs with DEKLE, J.

DEKLE, J. — dissenting:

I would deny certiorari in these limited circumstances where both sides have previously contracted in their collective bargaining agreement to submit the jurisdictional dispute to binding arbitration. This effectively removes the otherwise exclusive jurisdiction in the National Labor Relations Board.

The present cleavage is one step beyond the earlier stage of initial exclusiveness in N.L.R.B. on an alleged unfair practice. At today's stage it has become a matter of compliance with the parties' contract which both should honor; otherwise it becomes ineffectual. State courts historically determine contract matters. The parties here agreed to arbitrate this question so that, as to this point, they thereby chose not to utilize the N.L.R.B. This was their right.

The N.L.R.B. itself takes this view, contrary to our majority opinion which would send this jurisdictional dispute to that body first. The recent case of Local 423, Laborers and V & C Brickcleaning Co., 199 NLRB No. 48, BNA Daily Labor Report at Page A-3 (October 5, 1972), conclusively lays to rest the claim of preemption by petitioner here. In

that case, the National Labor Relations Board has held that it would *not* exercise jurisdiction over a jurisdictional dispute *where the parties involved agreed by contract* (as here) *to settle such disputes through a national joint board.* This is the same logic which I have endeavored to set forth above and comports with reason and applicable jurisdiction.[1]

In that cause the N.L.R.B. said that the Board cannot get into a dispute between the bricklayers and laborers, over who is to use certain equipment and do certain work regarding the brick at a construction site in Columbus, Ohio. The Board held as follows:

> "A majority of the panel holds that in view of the contract between V&C and Bricklayers, the parties have agreed to be bound by a decision of the Joint Board. The majority likewise finds that the Laborers, by signing the April 1970 agreement reconstituting the Joint Board, likewise agreed to be bound by Board determinations. . . .
>
> "If we retained jurisdiction in this case, the statutory purpose to encourage the voluntary settlement of jurisdictional disputes would be frustrated in that a party receiving an adverse decision from the agreed-upon tribunal for settling its jurisdictional dispute would be encouraged to ignore such decision, lapse into noncompliance, and then come before this Board for a more favorable resolution to the dispute.
>
> * * * *
>
> "[T]he thrust of Section 10(k) of the Taft Act is to forbid the Board to settle a jurisdictional dispute only

1. See 25 Vand. L.Rev. 1057, Oct. 1972, "Deference of Jurisd. by NLRB and the Arbitration Clause."

> upon a showing that there's an agreed-upon method for disposing of the case, not upon a further showing that the agreed-upon method will be expeditious."

It is, therefore, apparent that our own Court is in conflict with the Board which we say, contrary to that Board, has jurisdiction here. The authorities set forth in the scholarly DCA opinion of Spector, J., also support this conclusion.

I would agree with the reasoning of the Board and of the District Court of Appeal and deny prohibition, letting the order of the able Chancellor stand for the matter to be determined under the parties' contract for arbitration. To do otherwise is to encourage needless and protracted litigation. To avoid such litigation and the ensuing delay is the purpose of arbitration and such contract provisions, to help unclog the busy courts and boards of this teeming land.

I respectfully dissent.

DREW, J. (Retired), Concurs

IN THE SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1973

FRIDAY, JULY 20, 1973

Case No. 41,199

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, ETC, ET AL,

Petitioners,

vs.

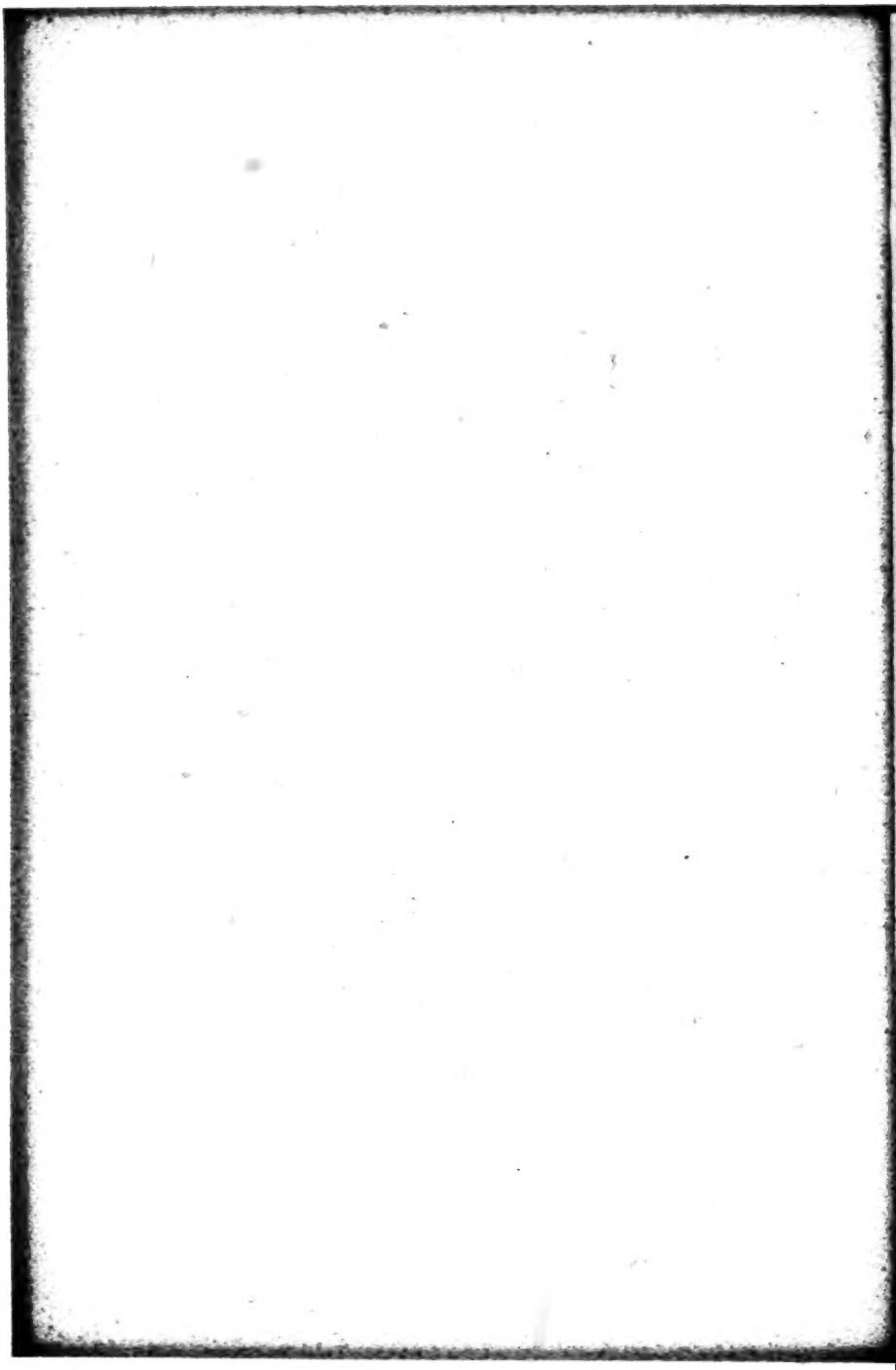
THE HONORABLE ROGER J. WAYBRIGHT, Etc.,

Respondent.

On consideration of the petition for rehearing filed by attorneys for respondent, and response thereto,

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

CARLTON, C.J., ERVIN, ADKINS and McCAIN, JJ., Concur
BOYD and DEKLE, JJ., and DREW (Retired) J., Dissent



SUPREME COURT, U. S.
26 973
MICHAEL RODAK, JR., CLERK

In The
Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-466

WILLIAM E. ARNOLD COMPANY, a Florida corporation

Petitioner,

v.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH JOHN H. SEA, BUSINESS REPRESENTATIVE THEREOF; AND CARPENTERS LOCAL UNION NO. 627, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH EARL S. HUFF, ASSISTANT BUSINESS REPRESENTATIVE THEREOF,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

JOSEPH S. FARLEY, JR.
of
MAHON, FARLEY & VICKERS
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Attorneys for Respondents

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Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

STATEMENT OF THE CASE

Respondents would adopt and accept Petitioner's Statement of the Case insofar as it is supported by the record presented in the Appendix attached to the Petition.

REASONS FOR NOT GRANTING WRIT

The Respondent would respectfully submit that the Opinion of the Court Below did not decide a substantial federal question, and it was not in conflict with any decision of this Court.

A. THE OPINION IS NOT IN CONFLICT WITH THE NATIONAL LABOR POLICY AS SET FORTH IN *SMITH V. EVENING NEWS ASSOCIATION*, 371 U.S. 195 (1962).

Smith v. Evening News, supra, was not a suit for injunctive relief, as was the case at bar. It was a suit for damages under §301 of the Act. Petitioner argues that the Florida Supreme Court has foreclosed the Florida state courts from entertaining suits on collective bargaining contracts. This is not the case.

The Supreme Court of Florida narrowly held that (1) in a suit for injunction, (2) upon a collective bargaining contract, (3) where the activity sought to be enjoined is arguably an unfair labor practice, (4) the National Labor Relations Board should be given the first opportunity to act in the matter, and the state courts should defer action at least until the National Labor Relations Board decides.

The Supreme Court of Florida *did not* say the trial courts of this state did not have jurisdiction over cases of this type. Injunctive relief being the drastic relief that it is, this policy is actually more harmonious with a national labor policy. No longer can parties schedule a quick hearing in the state court, without notice, and obtain an injunction before the other party knows what is going on. Labor relations, unions, employers, and collective bargaining agreements have tradition-

ally been within the Federal curtilage. The Supreme Court of Florida has merely tried to formulate a procedural doctrine whereby Federal law will be more closely followed. The parties may apply to the National Labor Relations Board, or they may file suit in the Federal District Courts. As noted in *Boys Markets, Inc. v. Retail Clerk's Union, Local 770*, 90 S.Ct. 1583 (1970), there is a compelling incentive for defendants in these cases to obtain removal to the Federal Courts anyway, to obtain the advantage of the stricter Federal policy on injunctive relief adopted in *Boys Market*, supra.

Also as noted in *Boys Market*, at 90 S. Ct. 1591, NOTE at:

> "15. It is true that about one-half of the States have enacted so-called 'little Norris La Guardia Acts' that place various restrictions upon the granting of injunctions by state courts."

The Supreme Court of Florida has done essentially the same thing, by imposing judicial restrictions on the granting of state court injunctions. It has not, as indicated by petitioner, denied access to the state courts of Florida. Many suits will not involve unfair labor practices. Many will not be requesting injunctive relief.

Another point distinguishes this case from the theory and rationale enunciated in *Boys Market*, supra. Petitioners claim the no-strike promise on the part of the union is the quid pro quo for the grievance arbitration machinery, the binding-arbitration agreement.

The Court made a very narrow holding in *Boys Market*, supra. As stated by this Court at page 1594.

> "Our holding in the present case is a narrow one. *We*

> *do not undermine the vitality of the Norris La Guardia Act.* We deal only with the situation in which a collective bargaining contract contains a mandatory grievance adjustment or arbitration procedure. Nor does it follow from what we have said that injunctive relief is appropriate as a matter of course in every case of a strike over an arbitrable grievance." (Emphasis supplied)

In the case at bar, an injunction was issued with no provision directing the parties to arbitrate. Moreover, the particular contractual provision in question, quoted on page 4 of the Petition herein, says merely that "A mutually agreeable settlement, or joint decision of the international unions involved, or interpretation of the National Joint Board for Settlement of Jurisdictional Disputes (or Hearing Panel) shall be binding and all parties agree to accept such decision or interpretation." It is certainly unclear how that binds anyone to anything. What if the parties cannot agree which avenue to take? The problem would never be settled.

Thus there can be no finding from reading the words in the contract, that there is any mandatory grievance language contained within it at all. What would occur if none of the various avenues named as alternatives were agreed upon by the parties involved? There is obviously no solution provided by the language of the clause in question.

This Court has very definitely held in *Boys Market*, supra, that it does not *undermine the vitality of the Norris-La Guardia Act*. What meaning then is to be given to the decision in *Boys Market*? Presumably, precisely the meaning dictated by this Court -- that is, it encompasses a very narrow area of the law, and one into which this case does not fall. What meaning then is to be given to the Norris-LaGuardia Act?

Cannot some form of reservation be placed upon the courts of the various states prior to their issuance of injunctive relief?

Respondents would respectfully request that this Court refrain from exercising any jurisdiction in this cause for the reason that it does not adequately present federal questions necessitating resolution.

The Florida Supreme Court merely held to the tenet it fixed in *Scherer and Sons, Inc. v. International Garment Workers Union Local 415*, 142 So2d 290 (Fla. 1967). In that case the Court noted at 293:

> "It must be conceded, however, that where a given situation is 'arguably subject' to the prohibitions or protections of the Taft-Hartley Act, the federal government has pre-empted state action, *at least to the extent of conveying to the National Labor Relations Board the initial jurisdiction to determine the applicability of the federal law.* (Emphasis supplied)

B. THERE IS NO VIOLATION OF THE SUPREMACY CLAUSE OF THE CONSTITUTION OF THE UNITED STATES.

The Petitioner herein argues that the opinion of the Florida Supreme Court frustrates the national labor policy, and uniformity in substantive labor law between state and federal courts.

If anything, the opinion tries to assure uniformity in the substantive labor law. This case, of course, deals only with a procedural aspect in attempting to harmonize substantive law. It is submitted that the Florida Supreme Court was merely doing what this Court instructed it to do in *Nash v.*

Florida Industrial Commission, 389 U.S. 235, 88 S.Ct. 362, 19 L.Ed.2d 438, (1967), and that was to refrain from frustrating enforcement of the National Labor Relations Act.

This Court pointed out in that case:

> "The National Labor Relations Act, supra, is a comprehensive regulatory code passed by Congress to regulate Labor relations in activities affecting interstate and foreign commerce. As such it is of course the law of the land which no state law can modify or repeal."

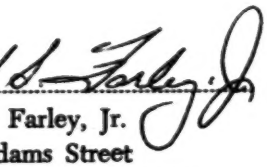
It is submitted that the most positive method that the State of Florida can employ to avoid interference with the National Labor Relations Act and the National Labor Relations Board, is to defer action in an injunctive action, where there are allegations of an unfair labor practice, at least until the National Relations Board determines jurisdiction.

CONCLUSION

Respondents respectfully submit that for the foregoing reasons, this Honorable Court should refrain from exercising jurisdiction in this cause, and the Petition for a Writ of Certiorari to the Supreme Court of Florida should be denied.

Respectfully submitted,

MAHON, FARLEY & VICKERS

By 
Joseph S. Farley, Jr.
350 E. Adams Street
Jacksonville, Florida 32202
Attorneys for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Respondents' Brief in Opposition to Petition for a Writ of Certiorari to the Supreme Court of Florida has been furnished to J. P. Jones, Esquire, of Coffman & Jones, Post Office Box 40089, Jacksonville, Florida 32203, Attorneys for Petitioner, by Mail, this 25th day of October, A.D. 1973.

Attorney

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-466

WILLIAM E. ARNOLD COMPANY, PETITIONER

v.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted pursuant to the Court's order of December 3, 1973, inviting the Solicitor General to file a brief expressing the views of the United States.

QUESTION PRESENTED

Whether a state court has jurisdiction in a suit under Section 301 of the Labor Management Relations Act to enjoin the breach of a no-strike clause contained in a collective bargaining agreement where the breach arguably is an unfair labor practice under the National Labor Relations Act.

STATEMENT

Petitioner, a general contractor whose operations are subject to the National Labor Relations Act, 29 U.S.C., 151, *et seq.*, brought suit under Section 301

of the Labor Management Relations Act, 29 U.S.C. 185, in a Florida state court, seeking an injunction prohibiting the respondent unions from violating a no-strike clause in the collective bargaining agreement between petitioner and the unions. The clause (Pet. 4) provides as follows:

> **ARTICLE VI**
>
> There shall be no work stoppage, slowdown, work cessation or strike because of a jurisdictional dispute. A mutually agreeable settlement, or joint decision of the international unions involved, or decision or interpretation of the National Joint Board for Settlement of Jurisdictional Disputes (or Hearing Panel) shall be binding and all parties agree to accept such decision or interpretation.

The trial court issued a temporary restraining order prohibiting the unions from causing any work stoppage in violation of Article VI of the collective agreement (Pet. App. 1a-2a). The unions then applied to a Florida District Court of Appeals for a writ of prohibition, contending that, because the alleged contract breach was arguably an unfair labor practice under Section 8(b)(4)(i)(D) of the National Labor Relations Act,[1] 29 U.S.C.

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[1] Section 8(b)(4) makes it an unfair labor practice for a labor organization or its agents:

> (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise, handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any

158(b)(4)(i)(D), the activities sought to be enjoined fell within the exclusive jurisdiction of the National Labor Relations Board. The District Court of Appeals denied the writ of prohibition (Pet. App. 3a-8a).

The Supreme Court of Florida vacated the decision of the District Court of Appeals. The Florida Supreme Court (with two judges dissenting) held that, since the strike enjoined by the trial court was, "at least arguably, a federally prohibited unfair labor practice," the jurisdiction which the state courts would otherwise have to enjoin a strike in breach of a no-strike clause was preempted by the Board's exclusive jurisdiction (Pet. App. 10a-11a).

DISCUSSION

1. The conclusion of the Florida Supreme Court that a state court lacks jurisdiction to enjoin a breach of a collective bargaining agreement where that breach is arguably an unfair labor practice is, in our view, incorrect. The preemption doctrine developed in such cases as *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236,[2] does not apply to contract

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person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is–

* * * * *

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work * * *.

[2] *Garmon* holds that, where an activity is either arguably protected by Section 7, or arguably prohibited by Section 8, of the National Labor Relations Act, "the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted" (359 U.S. at 245).

actions under Section 301 of the Labor Management Relations Act, 29 U.S.C. 185. Thus, in *Local 174 Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95, 101, n. 9, this Court stated that the *Garmon* doctrine is "not relevant" to Section 301 actions. In *Smith* v. *Evening News Association*, 371 U.S. 195, 197, this Court squarely held that "[t]he authority of the Board to deal with an unfair labor practice which also violates a collective bargaining contract is not displaced by §301, but it is not exclusive and does not destroy the jurisdiction of the courts in suits under §301."[3] Accordingly, in that case the Court sustained the power of the state court to entertain a suit for damages brought by an employee, alleging that the employer had violated the clause of the collective agreement barring discrimination because of union membership.

These decisions reflect the legislative history of Section 301, which, as this Court noted in *Dowd Box Co., Inc.* v. *Courtney*, 368 U.S. 502, 513, shows that "Congress deliberately chose to leave the enforcement of collective agreements 'to the usual processes of the law.'" It is particularly appropriate that the present case, involving an arguable violation of Section 8(b)(4)(i)(D) of the National Labor Relations Act, concerning jurisdictional disputes, be left to those "usual processes." Section 10(k) of the Act, 29 U.S.C. 160(k), which establishes a special procedure for charges involving jurisdictional disputes, provides:

> Whenever it is charged that any person has engaged in an unfair labor practice within the

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[3] This holding has been recently reaffirmed in *Motor Coach Employees of America* v. *Lockridge*, 403 U.S. 274, 297-298.

> meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

As this Court has observed, Section 10(k) "not only tolerates but actively encourages voluntary settlements of work assignment controversies between unions * * *." *Carey* v. *Westinghouse Electric Corp.*, 375 U.S. 261, 266.[4] Depriving state courts of jurisdiction to enforce collective bargaining agreement provisions respecting settlement of jurisdictional disputes whenever an unfair labor practice is arguably involved would necessarily weaken the incentive to enter into such agreements.

Moreover, the Board has interpreted Section 10(k) as meaning that "if all parties to a dispute have agreed on a method for the adjustment of the dispute, the Board is barred from making * * * a determination [regarding the issues in dispute]." *Laborers, Local 670 (Southern Illinois Builders Ass'n),* 189 NLRB 715,

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[4] See also Section 203(d) of the Labor Management Relations Act, 29 U.S.C. 173(d), which provides:

> Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. * * *

716. To permit state courts to enforce agreed upon methods for settling jurisdictional disputes would be in harmony with this Board policy.[5]

2. That injunctive relief was sought does not affect the Florida court's jurisdiction, although it may affect its power to grant the relief sought. "The nature of the relief available after jurisdiction attaches is, of course, different from the question whether there is jurisdiction to adjudicate the controversy." *Avco Corp.* v. *Aero Lodge 735,* 390 U.S. 557, 561.

Thus, *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770,* 398 U.S. 235, holds that the Norris-La Guardia Act, 29 U.S.C. 104, does not bar a federal court in a Section 301 suit from enjoining a strike in breach of a no-strike commitment, if, *inter alia,* the collective bargaining contract contains a mandatory grievance adjustment or arbitration procedure applicable to the grievance in question, and the petitioner is ready to proceed with arbitration (*id.* at 253-254). This Court has not decided whether the same restrictions would be applicable to a Section 301 suit, like the present one, which was brought in a state court and not removed to a federal court.[6] If these prerequi-

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[5] Compare this Court's decision in *Gateway Coal Co.* v. *United Mine Workers of America,* No. 72-782, decided January 8, 1974.

[6] But see *McCarroll* v. *Los Angeles County Dist. Council of Carpenters,* 49 Cal. 2d 45, 63, 64, 315 P. 2d 322, 332 certiorari denied, 355 U.S. 932, holding that, "whether or not Congress could deprive state courts of the power to give * * * [equitable] remedies when enforcing collective bargaining agreements, it has not attempted to do so either in the Norris-LaGuardia Act or section 301," and that "there is no invariable requirement, implicit in the federal system, that a state court enforcing a federal right must not go beyond the remedies available in a federal court."

sites to injunctive relief are applicable within the state, it may be questioned whether they were satisfied in the present case.[7] Nor has this Court determined, or the Florida court considered, to what extent a state court is free to abstain in a suit of this sort.[8] These are issues to be determined after the suit has been reinstated.

CONCLUSION

The decision of the Supreme Court of Florida that state court jurisdiction over petitioner's suit was

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[7] Thus, the Florida District Court of Appeals, in rejecting respondents' challenge to the trial court's jurisdiction, noted:

> [W]e do not necessarily hold that the temporary restraining order entered in the case pending before the respondent [court] is free from error by reason of the court's failure to include therein an order directing the plaintiff-employer and the relator-union to arbitrate or submit their grievances to the joint board for expeditious resolution. While the failure to so direct may affect the correctness of the temporary restraining order, that is a matter not going to the jurisdiction of the respondent court. Rather, it is a matter which is subject to being reviewed by interlocutory appeal in this court or on review from final judgment in the event the parties should elect to litigate further in the lower court. [Pet. App. 7a-8a.]

[8] Cf. *Boys Market, supra,* 398 U.S. at 247-249.

preempted by the National Labor Relations Act should be reversed.

Respectfully submitted.

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JANUARY 1974.

In The
Supreme Court of the United States
OCTOBER TERM, 1973

JAN 26
MICHAEL RODAK, J

No. 73-466

WILLIAM E. ARNOLD COMPANY,
a Florida corporation,

Petitioner,

v.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH JOHN H. SEA, BUSINESS REPRESENTATIVE THEREOF; AND CARPENTERS LOCAL UNION NO. 627, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH EARL S. HUFF, ASSISTANT BUSINESS REPRESENTATIVE THEREOF,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR THE PETITIONER

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In The
Supreme Court of the United States
OCTOBER TERM, 1973

No. 73-466

WILLIAM E. ARNOLD COMPANY,
a Florida corporation,

Petitioner,

v.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH JOHN H. SEA, BUSINESS REPRESENTATIVE THEREOF; AND CARPENTERS LOCAL UNION NO. 627, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH EARL S. HUFF, ASSISTANT BUSINESS REPRESENTATIVE THEREOF,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The Temporary Restraining Order issued by the Circuit Court of the Fourth Judicial Circuit in and for Duval County,

Florida is not reported. P.App.1a; A. 37.[1/] The Opinion and Order of the District Court of Appeal, First District, State of Florida, denying the Respondent-Union's Suggestion for Writ of Prohibition is reported at 248 So.2d 179, 78 LRRM 2208. P.App.3a. The Opinion of the Supreme Court of Florida is reported at 279 So.2d 300, 83 LRRM 2033, P.App.8a.

JURISDICTION

The judgment of the Supreme Court of Florida was entered on April 18, 1973. A timely Petition for Rehearing was denied by the Supreme Court of Florida on July 20, 1973. A. 47; P. App.15a. The Petition for Writ of Certiorari was filed with this Court on September 11, 1973, and was granted on December 3, 1973. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1257(3), 2101(c).

CONSTITUTIONAL PROVISION INVOLVED

Article VI, Clause 2, U. S. Constitution:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law

1. The opinions and orders of the District Court of Appeal, First District, State of Florida, and the Supreme Court of Florida are printed as appendixes to the Petition for Writ of Certiorari. These opinions and orders have not been separately reprinted in the Appendix, filed pursuant to Supreme Court Rule 36. References to the opinions and orders of the courts below will be designated as "P.App. (with page number following)." The designation "A. (with page number following)" will be made when referring to the printed Appendix filed pursuant to Supreme Court Rule 36.

of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary, notwithstanding."

STATUTES INVOLVED

1. Section 203(d) of the National Labor Relations Act, as amended, 29 U.S.C. §173(d):

> "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes over the application or interpretation of an existing collective-bargaining agreement. The Service (Federal Mediation and Conciliation Service) is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases."

2. Section 301(a) of the National Labor Relations Act as amended, 29 U.S.C. §185(a):

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

QUESTION PRESENTED FOR REVIEW

Whether the state courts have jurisdiction to enjoin the breach of a no-strike clause contained in a collective bargaining agreement where the breach also arguably involves an unfair labor practice.

STATEMENT OF THE CASE

Petitioner, William E. Arnold Company (hereinafter referred to as Arnold), is a general contractor with its principal place of business located in Jacksonville, Florida. When the work stoppage at issue arose, Arnold was in the process of constructing the Jacksonville General Hospital in Jacksonville, Florida, at a cost of 2.3 million dollars.[2/] A.12-13; 15.

Arnold is a member of the Associated General Contractors of America, Northeastern Florida Chapter (AGC). For many years, Arnold has had a collective bargaining agreement with the Respondents, Carpenters District Council of Jacksonville and Vicinity and its local affiliates (hereinafter referred to as the "Carpenters Union" or the "union"). At all times material to the action of the trial court below, a collective bargaining agreement was in effect between Arnold and the Carpenters Union. The collective bargaining agreement was

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2. Although there was no transcript of the evidence presented before the trial court in support of Arnold's application for Temporary Restraining Order, there is no dispute between the parties that the work stoppage involved a grievance over a jurisdictional work assignment and that the dispute underlying the work stoppage was expressly subject to a no-strike clause coupled with grievance-arbitration procedures under the collective bargaining agreement between the parties. The trial court found from the evidence presented that Arnold would suffer irreparable harm unless the Temporary Restraining Order was granted. All of the opinions and orders of the courts below recognized the above undisputed factors. See P.App.1a through 14a.

negotiated through the local AGC Chapter. A.14,19; R.Vol.II, Part XII. Article VI of the collective bargaining agreement contained a no-strike provision which reads as follows:

> "There shall be no work stoppage, slowdown, work cessation or strike because of a jurisdictional dispute. A mutually agreeable settlement, or joint decision of the international unions involved, or decision or interpretation of the National Joint Board for Settlement of Jurisdictional Disputes (or Hearing Panel) shall be binding and all parties agree to accept such decision or interpretation." A.21-22. (See attachments to union's Suggestion for Writ of Prohibition, R.Vol.I, Part VI.)

One of Arnold's subcontractors on the Jacksonville General Hospital job had a collective bargaining agreement with the Wood Wire and Metal Lathers International Union, AFL-CIO, Local 59. Pursuant to that agreement, the subcontractor awarded certain work to the Lathers Union. The assignment of this work by the subcontractor to the Lathers Union gave rise to a dispute between the Lathers Union and the Carpenters Union members who were employed by Arnold. A. 15-16. On April 21, 1971, the Carpenters Union members employed by Arnold instituted a strike against Arnold in order to force a change in the work assignment made by Arnold's subcontractor to the Lathers Union members.[3/]

After the strike had begun, Arnold filed a Complaint on April 23, 1971, in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, seeking an injunc-

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3. The nature of the dispute underlying the strike was admitted by the Carpenters Union in its brief on the merits filed with the Supreme Court of Florida (R.Vol.I, Part III) and in its Suggestion for Writ of Prohibition originally filed with the Florida District Court of Appeal. A.3-5, 8-11.

tion prohibiting the Carpenters Union from violating the no-strike promise contained in Article VI of the collective bargaining agreement entered into between the parties. A.12. Telephonic notice of hearing was given to the parties prior to the evidentiary hearing conducted before the Duval County Circuit Court. A.10,37. At the hearing on Arnold's Application for Temporary Restraining Order, counsel for the union moved to dismiss the Complaint on the grounds, *inter alia*, that the court's jurisdiction to adjudicate the breach of the collective bargaining agreement was preempted by federal law. A.8-11. On April 23, 1971, the Honorable Roger J. Waybright, Circuit Judge in and for Duval County, Florida, issued a Temporary Restraining Order prohibiting further breaches of the no-strike promise contained in the collective bargaining agreement. A.37; P.App.1a. The Carpenters Union thereafter filed a Suggestion for Writ of Prohibition with the District Court of Appeal, First District, State of Florida. In its Suggestion for Writ of Prohibition, the union alleged that since the no-strike contract violation was also an unfair labor practice under Section 8(b)(4)(D) of the National Labor Relations Act, the state courts had been preempted of jurisdiction to remedy the contract breach. A. 8-11.

The Florida District Court of Appeal denied the union's Suggestion for Writ of Prohibition. 248 So.2d 179; P.App.3a. In denying the union's Suggestion for Writ of Prohibition, the Florida District Court of Appeal reasoned that under the authority of *Boys Markets v. Retail Clerks*, 398 U.S. 235, 74 LRRM 2257 (1970), and *RCA v. IATSE, Local 780*, 160 So. 2d 150, 55 LRRM 2478 (2nd DCA Fla.1964), *cert. denied* 169 So.2d 390 (Fla. 1964); *cert. denied* 380 U.S. 973 (1965), the state courts were not preempted of their jurisdiction to enforce a no-strike clause in a collective bargaining agreement

even where the contract breach was arguably an unfair labor practice. 248 So.2d at 180-81; P.App.3a, 6a-8a.

The union then filed a Petition for Writ of Certiorari with the Supreme Court of Florida. A. 3-5. Certiorari was granted and the Supreme Court of Florida entered its opinion and judgment on April 18, 1973, vacating the decision of the Florida District Court of Appeal. A.7; 279 So.2d 300; P.App. 8a-13a. In its majority opinion, the Supreme Court of Florida held that since the union's contract breach arguably involved an unfair labor practice, the National Labor Relations Board had exclusive jurisdiction. In concluding that the state courts had been preempted of their jurisdiction to enjoin the contract breach, the Supreme Court of Florida found that:

> "The decisive issue is whether or not the activity enjoined is arguably an unfair labor practice, not whether it is also a contract breach." P.App.11a.

In a dissenting opinion, concurred in by Justice Drew, Justice Dekle found that, since the parties had expressly agreed to a no-strike clause and to arbitrate the dispute underlying the strike, the state courts had not been preempted of their jurisdiction to enforce the contractual intent of the parties. Justice Dekle also found that the majority opinion of the Supreme Court of Florida was in direct conflict with the National Labor Relations Board's decision in *Laborers Local 423 and V&C Brickcleaning Company*, 199 NLRB No. 48, 81 LRRM 1300 (1972). Justice Dekle further reasoned that both parties should honor their contract commitments and that:

> ". . . To do otherwise is to encourage needless and protracted litigation. To avoid such litigation and ensuing delay is the purpose of arbitration and such con-

> tract provisions, to help unclog the busy courts and boards of this teeming land."
> 279 So.2d at 303; P.App.14a.

Arnold, thereafter, timely filed a Petition for Rehearing with the Supreme Court of Florida. The Petition alleged that the court below apparently overlooked or failed to consider prior decisions of both this Court and the National Labor Relations Board which had expressly rejected the claim of preemption where a contract breach also arguably involved an unfair labor practice. See *Smith v. Evening News Association*, 371 U.S. 195, 51 LRRM 2646 (1962); *Collyer Insulated Wire*, 192 NLRB No. 150, 77 LRRM 1931 (1971). A. 47-49. Various local chapters of the Associated General Contractors of America, the Florida State Chamber of Commerce, and numerous other employers having collective bargaining agreements in the State of Florida, filed amicus curiae briefs in support of the Petition for Rehearing. R. Vol. II, Parts XII, XIII, XIV, XV, XVI, XVII, XVIII. On July 20, 1973, in a 4 to 3 decision, the Supreme Court of Florida denied the Petition for Rehearing. P.App.15a.

On September 11, 1973, Arnold filed a Petition for Writ of Certiorari with this Court seeking review of the Supreme Court of Florida's decision. The Petition was granted on December 3, 1973.

ARGUMENT

INTRODUCTION

The decision of the court below is in direct conflict with prior pronouncements of this Court and presents questions of critical importance regarding the viability of our national labor policy. Compulsory arbitration, without resort to strike, over jurisdictional work assignment disputes is no longer a viable option under the Supreme Court of Florida's decision in this case. The devastating effects of this ruling on the construction industry are obvious. Jurisdictional disputes are common occurrences in the construction industry. For many years construction contractors and construction trades unions have voluntarily agreed to submit jurisdictional disputes for final and binding arbitration to the National Joint Board for the Settlement of Jurisdictional Disputes, Building and Construction Industry. But even more serious than the catastrophic effects to construction industry employers and unions is the rationale of the ruling below that *no* breach of a collective bargaining agreement which arguably involves an unfair labor practice can be remedied in the state courts. This ruling undermines the entire structure of our national labor policy which encourages peaceful enforcement of voluntarily agreed upon grievance-arbitration processes.

Specifically at issue is the question of whether or not the state courts of Florida lack jurisdiction to enforce no-strike promises in collective bargaining agreements where the dispute underlying the strike is also arguably an unfair labor practice under the National Labor Relations Act. If the collective bargaining process is to survive, then the peaceful resolution of industrial disputes through the grievance-arbitration procedure must be recognized as the very heart of

the collective bargaining process. The ability of the grievance-arbitration adjustment procedure to pump life into the collective bargaining system has been struck a deadly blow by the decision of the court below.

The primary purpose of the National Labor Relations Act is to set up the legal framework which will promote collective bargaining and make the collective bargaining process work. As will be demonstrated below, the decision of the Supreme Court of Florida flies in the face of national labor policy by: 1) undercutting freedom to negotiate substantive terms of collective bargaining agreements; 2) destroying mutual reliance between employers and unions that each will abide by his respective contract commitments; 3) making the grievance-arbitration process meaningless and ineffectual; 4) destroying the law force necessary to insure that the responsibilities undertaken in the collective bargaining process will be carried out; and 5) failing to recognize that injunctive relief is absolutely essential to enforce no-strike commitments.

I. THE STATE COURTS HAVE JURISDICTION TO ENJOIN THE BREACH OF A NO-STRIKE CLAUSE CONTAINED IN A COLLECTIVE BARGAINING AGREEMENT EVEN THOUGH THE CONTRACT BREACH ARGUABLY INVOLVES AN UNFAIR LABOR PRACTICE.

A. THE SUPREME COURT OF FLORIDA ERRED IN HOLDING THAT THE STATE COURTS ARE PREEMPTED FROM THEIR JURISDICTION TO ENJOIN VIOLATIONS OF NO-STRIKE AGREEMENTS WHERE THE BREACH OF THE COLLECTIVE BARGAINING AGREEMENT IS ALSO ARGUABLY AN UNFAIR LABOR PRACTICE.

The court below was faced with the question of whether a state court loses its jurisdiction to enforce a collective bargaining agreement where the alleged breach of the agreement also involves an unfair labor practice. This same basic issue has previously been posed before this Court on at least two different occasions. See *Carey v. Westinghouse Electric Corporation*, 375 U.S. 261, 55 LRRM 2042 (1964); *Smith v. Evening News Association*, 371 U.S. 195, 51 LRRM 2646 (1962). In *Carey v. Westinghouse Electric Corporation, supra*, a work assignment dispute arose between the IUE Union, which represented the "production and maintenance workers" of Westinghouse Electric, and the Federation Union, which represented "all salaried and technical employees" of Westinghouse. IUE and Westinghouse were operating under a collective bargaining agreement which contained a grievance-arbitration procedure to resolve "disputes concerning the interpretation, application or claimed violations of the agreement." IUE filed a grievance claiming that certain Federation employees in the engineering laboratory were perform-

ing "production and maintenance work." Westinghouse refused to arbitrate and IUE thereafter filed a suit in the New York state court seeking an order compelling arbitration. Westinghouse's contention that the controversy involved a question of representation for the National Labor Relations Board was upheld in the New York state courts which refused to order arbitration of the work assignment dispute. The New York Court of Appeals reasoned that the subject matter of the grievance was within the exclusive jurisdiction of the NLRB since it involved a question of representation. 11 N.Y.2d 452, 230 N.Y.S.2d 703, 50 LRRM 2740 (N.Y.App. 1962).

On certiorari review, this Court reversed the holding of the New York Court of Appeals and held that the state courts were *not* preempted of their jurisdiction to compel arbitration of IUE's work assignment dispute. *Carey v. Westinghouse Electric Corporation*, 375 U.S. 261. The Court found that the work assignment dispute could arguably be characterized as either 1) a controversy as to whether certain work should be performed by the IUE bargaining unit or the Federation bargaining unit; or 2) a dispute as to which union should represent the employees doing the disputed work. The Court reasoned that whether the dispute were viewed as a "jurisdictional dispute" or a question of "representation," a remedy existed before the NLRB.[4/] In holding that the existence of a remedy before the NLRB did not oust state courts of their jurisdiction to order arbitration, the Court emphasized the Congressional policy favoring voluntary settlement of work assignment disputes found in Section 10(k) of the Act:

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4. See §§8(b)(4)(D) and 10(k) of the Act covering jurisdictional disputes and §§8(a)(5) and 9(c)(1) covering the duty to bargain and representation questions, respectively.

> "Since §10(k) not only tolerates but encourages voluntary settlement of work assignment controversies between unions, we conclude that grievance procedures pursued to arbitration further the policies of the Act." 375 U.S. at 266.

Carey v. Westinghouse Electric Corporation, supra, is so closely analogous to the facts in the case at bar that any distinguishing factors appear to be more nice than obvious. In the case *sub judice,* as was true in *Carey v. Westinghouse,* there was a work assignment dispute between two unions. In both cases, one of the parties sought to avoid its contract commitment to arbitrate the dispute by contending that the state courts were preempted from exercising jurisdiction to enforce the intent of the parties. In *Carey v. Westinghouse,* the state court action was filed to compel arbitration of the work assignment dispute. In the case at bar, the employer sought to enjoin the breach of an express no-strike agreement, coupled with mandatory grievance-arbitration procedures contained in the collective bargaining agreement between the parties. A.12,14-17. If there is any real difference between the case *sub judice* and *Carey v. Westinghouse Electric Corporation,* that difference can accurately be described as two different sides of the same coin. The grievance-arbitration process is the *quid pro quo* in the collective bargaining process for the union's no-strike promise. *Textile Workers v. Lincoln Mills,* 353 U.S. 448, 40 LRRM 2113 (1957).

This Court's decision in *Carey v. Westinghouse Electric Corporation* consistently reflected the previous pronouncement of the Court made in *Smith v. Evening News Association, supra.* In *Smith v. Evening News,* an employee

brought suit in the Michigan state courts seeking to recover damages for the breach of a collective bargaining agreement allegedly committed by the employer. The Supreme Court of Michigan affirmed the Michigan trial court's dismissal of the action, holding that the contract breach was within the exclusive jurisdiction of the National Labor Relations Board because the contract breach also involved an unfair labor practice. *Smith v. Evening News Association*, 106 N.W.2d 785, 362 Mich. 350 (Mich.1961). The decision of the Supreme Court of Michigan in *Smith v. Evening News* was reversed by this Court, which held that the suit filed in the Michigan trial court actually arose under Section 301 of the Act and that the jurisdiction of the state courts to enforce the breach of the collective bargaining agreement was not preempted by the NLRB. 371 U.S. 195. In so holding, this Court in the *Smith* case stated:

> "The authority of the Board [NLRB] to deal with an unfair labor practice which also violates a collective bargaining contract is not displaced by §301, but it is not exclusive and does not destroy the jurisdiction of the courts in suits under §301." 371 U.S. at 197.

In direct contradiction of the above holdings of this Court in *Smith v. Evening News Association, supra*, and *Carey v. Westinghouse Electric Corporation, supra*, the Supreme Court of Florida held in the case *sub judice* that state court jurisdiction to enforce a collective bargaining agreement *is* preempted by the NLRB where federally prohibited practices are involved. The court below reasoned that:

> "*. . . The decisive issue is whether or not the activity enjoined is arguably an unfair labor practice, not whether it is also a breach of contract.*" (Emphasis supplied.) 379 So.2d at 302, P.App.11a.

The court below also premised its holding on a prior decision of the Supreme Court of Florida rendered in *Sheetmetal Workers' International Association v. Florida Heat and Power, Inc.*, 230 So.2d 154, 73 LRRM 2239 (Fla.1970). Although the Florida Supreme Court's decision in *Sheetmetal Workers', supra*, did not involve an attempt to enjoin a strike which was in breach of a collective bargaining agreement, the Supreme Court of Florida erroneously reasoned that:

> ". . . In Radio Corporation of America v. Local 780 International Alliance of Theatrical Employees, AFL-CIO, 160 So.2d 150 (Fla.App.2d, 1964), relied on by the District Court, there was no allegation that the strike enjoined constituted an unfair labor practice as well as a breach of contract. In Boys Market v. Retail Clerks Union, 398 U.S. 235 (1970), also cited by the District Court [Florida], there was likewise no unfair labor practice involved. *It is these cases which should have been distinguished from the case at bar*, not *Sheetmetal Workers'. The decisive issue is whether or not the activity enjoined is arguably an unfair labor practice, not whether it is also a breach of contract.*" (Emphasis added.) 279 So.2d at 302; P.App.10a-11a.

In rendering its decision, the Supreme Court of Florida failed to meet its duty to apply federal substantive law in suits brought under Section 301 of the Act. Instead the court below applied its own notion of the federal preemption doctrine erroneously set forth in *Sheetmetal Workers', supra*.[5]

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5. In *Sheetmetal Workers'* the Florida Supreme Court erroneously concluded that any labor dispute that involved arguably protected or arguably prohibited activities under the NLRA was preempted from state jurisdiction by federal law unless violence or an affront to the state right to work law was involved. See 279 So.2d at 301. The erroneous notion of federal preemption in that decision spawned the patently erroneous result in the case at bar.

It is well settled that both the state and federal courts have jurisdiction over actiions to enforce collective bargaining agreements. See *e.g. Charles Dowd Box Company v. Courtney*, 368 U.S. 502, 49 LRRM 2619 (1962). In such cases, state law may be applied only to the extent that it is compatible with the purposes of Section 301(a) of the Act and where state law is applied, it iis absorbed into federal law. See *Textile Workers Union v. Lincoln Mills, supra.* In essence, state courts enforcing collective bargaining agreements must apply federal substantive law under Section 301 of the Act. *Textile Workers Union v. Lincoln Mills, supra; Charles Dowd Box Company v. Courtmey, supra; Teamsters Local 174 v. Lucas Flour Company*, 369 U.S. 95, 49 LRRM 2717 (1962). The federal substantive labor law controlling here was clearly delineated by this Court in *Carey v. Westinghouse Electric Corporation, supra*, and *Smith v. Evening News Association, supra.* That Federal substantive labor law is "the supreme law of the land" and was undermined by the decision of the court below. U.S. Const., Article VI, Clause 2.

B. THE DECISION BELOW UNDERMINES THE ENTIRE FRAMEWORK OF THE COLLECTIVE BARGAINING PROCESS.

The Supreme Court of Florida's decision renders unenforceable certain collective bargaining contract promises. If the breach of a collective bargaining agreement also happens to be an unfair labor practice, the Supreme Court of Florida would deny the non-breaching party any remedy to enforce the contract promise in the state court system. The court below has thus placed its imprimatur on industrial strife as a substitute for peaceful resolution of industrial disputes.

The primary purpose of the National Labor Relations Act is to set up the legal framework which will promote collective bargaining and thus promote industrial peace. See Section 1 of the Act, 29 USC §151. Even a cursory review of the Act reveals that there are four major conditions precedent to the achievement of industrial peace through the collective bargaining process. First, Congress recognized that both employers and unions must have freedom to negotiate the substantive terms of their collective bargaining agreements. Section 8(d) of the Act, 29 USC §158(d). Secondly, an economy based upon contractual commitments must be imbued with mutual reliance on reciprocal promises. Both employers and unions should *expect* that each party will abide by his respective contract commitments. Thirdly, Congress recognized that industrial controversies could best be resolved through a voluntarily agreed upon grievance-arbitration process. Sections 201, 203 and 204 of the Act, 29 USC §§171, 173, 174. Finally, Congress put teeth in the national labor policy by providing the law force necessary to *insure* that responsibilities undertaken in the collective bargaining process would be carried out. Sections 8(a)(5), 8(b)(3), and 301 of the Act; 29 USC §§158(a)(5), 158 (b)(3), 185.

As will be demonstrated *infra*, the decision of the court below can only serve to undermine the collective bargaining process and generate industrial strife.

1. *Freedom to Negotiate the Substantive Terms of Collective Bargaining Agreements.*

This Court has long recognized, in carrying out the expressed intent of Congress, that employers and unions should have broad latitude in negotiating the terms of their collective bargaining agreements. See *e.g. NLRB v. Jones & Laughlin*

Steel Corp., 301 U.S. 1, 45, 1 LRRM 703 (1937). The Court, in accord with Section 8(d) of the Act, has consistently held that neither the NLRB nor the courts have the power to dictate the substantive terms of collective bargaining agreements. *E.g. NLRB v. Burns International Security Services*, 406 U.S. 272, 80 LRRM 2225 (1972); *H. K. Porter Company, Inc. v. NLRB*, 397 U.S. 99, 102, 73 LRRM 2561 (1970); *Teamsters v. Oliver*, 358 U.S. 283, 43 LRRM 2374 (1959); *NLRB v. American Nat'l. Ins. Co.*, 343 U.S. 395, 30 LRRM 2147 (1952).

An effect of the decision below is to take away the freedom to bargain for a grievance-arbitration process to resolve jurisdictional disputes or any other contract dispute which might arguably involve an unfair labor practice. If a promise not to strike is not enforceable through the courts, the grievance-arbitration process will soon lapse into non-use.[6/] See *Boys Markets, Inc. v. Retail Clerks*, 398 U.S. 235, 248 (1970).

2. *Mutual Reliance on Reciprocal Promises Contained in the Collective Bargaining Agreement.*

The mutual exchange of promises involved in the collective bargaining process is the initial lubricant that makes the collective bargaining machinery work. A no-strike promise on the part of the union is the *quid pro quo* for the grievance-arbitration machinery in the collective bargaining system. *Textile Workers v. Lincoln Mills, supra.* In the court's opinion below, the no-strike promise, which lies at the very heart of

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6. The construction industry and the various AFL-CIO construction trades unions have recognized for many years the National Joint Board for the Settlement of Jurisdictional Disputes, Building and Construction Industry, as the final arbiter of work assignment disputes. The National Joint Board was first established in 1948. A.22; 21 LRRM 16, 44,50-52.

industrial peace, is rendered meaningless and unenforceable in the Florida state courts. If a no-strike agreement is unenforceable, then the employer has failed to receive the consideration bargained for in exchange for the grievance-arbitration process. The intent of the parties to the collective bargaining agreement is thus frustrated and mutual reliance is thereby destroyed. A system which lacks mutual reliance and the respect of its participants cannot long survive. In *Boys Markets, supra*, the Court pointed out the "devastating implications for the enforceability of arbitration agreements" that would result from denial of injunctive relief for breaches of no-strike obligations:

> "[A] no-strike obligation, express or implied is the *quid pro quo* for an undertaking by the employer to submit grievance disputes to the process of arbitration. . . . Any incentive for employers to enter into such an agreement is necessarily dissipated if the principal and most expeditious method by which the no-strike obligation can be enforced is eliminated." 398 U.S. at 248.

3. *The National Labor Policy is Premised Upon the Assumption that the Key to Industrial Peace is the Grievance-Arbitration Process Voluntarily Agreed to by the Parties in Their Collective Bargaining Agreement.*

By enacting Section 203(d) of the Act, Congress expressly recognized that a voluntarily agreed upon grievance-arbitration process was *the* preferred method for peacefully settling industrial disputes. Section 203(d) of the Act provides in part that:

> "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes over the applica-

tion of an existing collective-bargaining agreement. . . ."

In the case at bar, the parties have expressly agreed in their collective bargaining agreement that jurisdictional disputes are to be settled peacefully and without resort to strike. A. 21-22. The method preferred by our national labor policy has been undercut by the decision of the court below.

In fostering the Congressional policy contained in Section 203(d) of the Act, this Court has long recognized that industrial stability is best effectuated by the substitution of arbitration for industrial strife. See *e.g. Textile Workers v. Lincoln Mills, supra; United Steelworkers of America v. American Manufacturing Company,* 363 U.S. 564, 46 LRRM 2414 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Company,* 363 U.S. 574, 46 LRRM 2416 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corporation,* 363 U.S. 593, 46 LRRM 2423 (1960). In *Steelworkers v. Warrior & Gulf, supra,* this Court expressly acknowledged that our national labor policy could best be effectuated under a collective bargaining agreement containing *both* an arbitration provision for all unresolved grievances *and* an absolute prohibition of strikes. 363 U.S. at 578, f.n. 4. The collective bargaining agreement in the case *sub judice* contains the very same contractual provisions which this Court found would best achieve the federal labor policy. Article VI of the collective bargaining agreement provides in part that:

> "There shall be no work stoppage, slowdown, work cessation or strike because of a jurisdictional dispute. A mutually agreeable settlement, or joint decision of the international unions involved, or decision or interpretation of the National Joint Board for Settlement of

> Jurisdictional Disputes (or Hearing Panel) shall be binding and all parties agree to accept such decision or interpretation." A. 21-22.

The Supreme Court of Florida's decision that a no-strike promise is unenforceable, even where a grievance-arbitration procedure was received in exchange, is patently untenable. See *Southwestern Bell Telephone Corporation v. CWA*, 343 F.Supp. 1165, 80 LRRM 2513 (S.D. Tex.1972). The necessary effect of this ruling is to relegate all work assignment disputes, and any other contract dispute which arguably involves an unfair labor practice, beyond the reach of arbitrators or courts. This ruling will have particularly devastating effects upon the construction industry where jurisdictional disputes are common occurrences. The decision below opens Pandora's box to rampant wildcat strikes and chaos in the construction industry.

4. *Section 301 of the Act Provides the Ultimate Sanction to Make the Collective Bargaining Process Work.*

When Congress initially set up the basic legal framework for the collective bargaining process, it soon discovered that legal sanctions to enforce contract commitments were essential to promote our national labor policy. In enacting Section 301 of the Act,[7/] Congress did more than confer jurisdiction in the federal courts over labor organizations. It expressed a national policy that collective bargaining agreements should

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7. The Labor Management Relations Act as an amendment to the initial labor policy formulated in the National Labor Relations Act [Wagner Act]. The legislative history of §301 is unequivocal—"Once parties have made a collective bargaining contract, the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board." H. Conf. Rep. No. 510, 80th Cong., 1st Sess.p.42.

be enforced by the courts on behalf of or against labor organizations. *Textile Workers v. Lincoln Mills, supra.* Court enforcement of the grievance-arbitration machinery promotes industrial peace by making both parties assume a higher degree of responsibility to live up to their contract commitments. *Steelworkers v. Warrior & Gulf, supra; Textile Workers v. Lincoln Mills, supra.*

The National Labor Relations Board has expressly recognized that it has *concurrent* jurisdiction with the courts over actions which are both a contract breach and also arguably an unfair labor practice. *Laborers Local 423 and V&C Brick-cleaning Co.*, 199 NLRB No. 48, 81 LRRM 1300 (1972); *Collyer Insulated Wire*, 192 NLRB No. 150, 77 LRRM 1931 (1971). The Board's decision in *Laborers Local 423, supra,* involved a jurisdictional work assignment dispute in which the two contending unions had expressly agreed to submit such disputes to the National Joint Board for the Settlement of Jurisdictional Disputes, Building and Construction Industry. In that case, the Board initially deferred its jurisdiction over the work assignment dispute because the parties had agreed upon a voluntary method of adjustment.

> "If we [NLRB] retained jurisdiction in this case, the statutory purpose to encourage the voluntary settlement of jurisdictional disputes would be frustrated in that a party receiving an adverse decision from the agreed-upon tribunal for settling its jurisdictional dispute would be encouraged to ignore such decision, lapse into non-compliance, and then come before this Board for a more favorable resolution to the dispute." 81 LRRM at 1301.

This NLRB policy of deferring jurisdiction is consistent with the national labor policy initially established by Congress in

Section 203(d) of the Act and long since recognized by this Court. See *e.g. Carey v. Westinghouse Electric Corporation, supra; Smith v. Evening News Association, supra.*

The court below has in effect told employers and unions that they must submit all contract disputes which arguably involve unfair labor practices to the NLRB. The NLRB, under its *Collyer* deferral doctrine, will not entertain the dispute either where the parties have agreed on a mandatory grievance-arbitration process in their collective bargaining agreement. *E.g. Laborers Local 423 and V&C Brickcleaning Co., supra.* This leaves the parties in a no-man's land where self-help is the only means of recourse.

The long standing national labor policy, which favors enforcement of grievance-arbitration procedures, was most recently reaffirmed and strengthened in this Court's decision rendered in *Gateway Coal Company v. UMW,* ..... U.S. ....., 85 LRRM 2049 (Jan. 8, 1974). In *Gateway Coal Company v. UMW, supra,* the parties had expressly agreed to a detailed grievance procedure and broad arbitration clause providing for final and binding arbitration of *(inter alia)* any local trouble of any kind arising at the mine. A dispute arose between the mineworkers and Gateway concerning the adequacy of safety precautions and recordings of airflow in one of the mines. The mineworkers engaged in a work stoppage to force two foremen off the job who allegedly were not making the proper recordings of airflow in the mine. Gateway then offered to arbitrate the question as to whether the mine was rendered unsafe by the presence of the two foremen in the mine, but the union refused. When the strike continued, Gateway filed suit in the United States District Court for the Western District of Pennsylvania seeking to compel arbitration and enjoin the strike. ..... F.Supp....., 80

LRRM 2634 (W.D.Pa.1971). The District Court found that the dispute giving rise to the work stoppage was arbitrable and issued a *Boys Markets* injunction. See *Boys Markets v. Retail Clerks*, 398 U.S. 235, 74 LRRM 2257 (1970). Subsequently an impartial arbitrator ruled that the safety dispute was arbitrable and found without merit the union's claim that the mine was unsafe under the direction of the two foremen.

The United States Court of Appeals for the Third Circuit then reversed the judgment of the District Court in favor of Gateway and vacated the preliminary injunction. 466 F.2d 1157, 80 LRRM 3153 (3rd Cir. 1972). In *Gateway*, the Third Circuit Court of Appeals reasoned that public policy dictated a finding of non-arbitrability where safety disputes were allegedly governed by a general and non-specific grievance-arbitration procedure. See Section 502 of the Act, 29 USC §143. On certiorari review, this Court reversed the decision of the Third Circuit and upheld the power of the District Court to enjoin the strike. In *Gateway*, this Court again reaffirmed and strengthened the national labor policy which recognizes that grievance-arbitration machinery is *the* key to industrial peace. The Court reasoned that a good faith belief, unsupported by objective evidence of an emergency, that a grievance involves a safety dispute will not preclude the issuance of a no-strike injunction. Although the collective bargaining agreement in *Gateway* contained no express agreement prohibiting work stoppages, a no-strike promise was implied because of the existence of final and binding contract arbitration machinery. *Accord, Teamsters Local 174 v. Lucas Flour, supra.*

Unlike the grievance dispute underlying the strike in *Gateway*, the work assignment dispute between the parties in the

case at bar does not even involve an alleged threat to the safety of the Carpenters Union members. Furthermore, the work assignment dispute here was not merely "arguably arbitrable"[8] it was *expressly* subject to mandatory grievance-arbitration procedures *and* an express promise not to strike. There are thus even more compelling circumstances in the case at bar for upholding the state trial court's Temporary Restraining Order which enjoined the union's illegal work stoppage. If "safety grievances" are not *sui generis* and *are* subject to compulsory arbitration *without* strike, then work assignment disputes must logically come under the arguably arbitrable umbrella of national labor policy.

C. INJUNCTIVE RELIEF IS ABSOLUTELY NECESSARY FOR THE ENFORCEMENT OF NO-STRIKE PROMISES.

In *Boys Markets, Inc. v. Retail Clerks, supra,* this Court recognized the vital importance of the injunction as a tool to enforce no-strike promises. In *Boys Markets,* a dispute arose between the members of the Retail Clerks Union and some non-union employees working for Boys Markets. The dispute in that case involved a work assignment controversy between members of the Retail Clerks Union and non-union employees who were employed by Boys Markets. In order to force a resolution of that dispute, the Retail Clerks Union went on strike. At the time of the strike, the union and the employer were operating under a collective bargaining agreement which contained an express no-strike pledge. In overruling the Court's prior decision in *Sinclair Refining Co. v.*

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8. See *United Steelworkers of America v. Warrior & Gulf Navigation Co., supra,* where the Court first articulated the "arguably arbitrable" doctrine - doubts should be resolved in favor of finding that a particular dispute is arbitrable.

Atkinson, 370 U.S. 195, 50 LRRM 2420 (1962), the Court in *Boys Markets* upheld the power of a federal district court to issue an injunction against the strike. The Court also pointed out that injunctive relief to enforce a no-strike obligation should be available in *both* state and federal courts. 398 U.S. at p. 246.

The court below has ruled that state court injunctive relief will not be available to either employers or unions whenever the breach sought to be enjoined arguably involves an unfair labor practice.9/ This decision will provide a gaping loophole for evading collective bargaining promises. Employers faced with wildcat strikes over any issue denominated as either a "jurisdictional dispute" or a dispute which "arguably involves an unfair labor practice," must either capitulate or risk an indefinite shutdown and eventual economic ruin.

Freedom to negotiate the substantive terms of collective bargaining agreements entails correlative responsibility on the part of both employers and unions to live up to their contract commitments. The potential deterrent of injunctive relief will insure that collective bargaining responsibilities are met. The Supreme Court of Florida's decision is premised on the erroneous notion that industrial strife should continue until such time as the NLRB initially determines whether it will exercise jurisdiction over a work assignment dispute or decline such jurisdiction. Contrary to the court below, the NLRB has consistently ruled that it will defer its concurrent jurisdiction in favor of the parties' agreed-upon arbitration process. *E.g. Collyer Insulated Wire, supra.* See 279 So.2d

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9. It is highly probable that every breach of a collective bargaining agreement may "arguably involve an unfair practice." See §§8 (a)(5), 8(b)(3), 8(d) of the Act; *Collyer Insulated Wire, supra.*

at 303; P.App.14a. Rather than promoting the expeditious and peaceful settlement of industrial controversies, the decision of the Florida Supreme Court will only add fuel to the fire of potential industrial strife.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Decision and Order of the Supreme Court of Florida be reversed.

Respectfully submitted,

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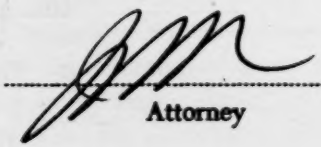

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IN THE

Supreme Court of the United States

MICHAEL RODAK,

OCTOBER TERM, 1973.

No. 73-466

WILLIAM E. ARNOLD COMPANY,
A FLORIDA CORPORATION,

Petitioner,

VS.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH JOHN H. SEA, BUSINESS REPRESENTATIVE THEREOF; AND CARPENTERS LOCAL UNION NO. 627, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH EARL S. HUFF, ASSISTANT BUSINESS REPRESENTATIVE THEREOF,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA.

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AS AMICUS CURIAE, IN SUPPORT OF THE PETITIONERS.

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BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AS AMICUS CURIAE, IN SUPPORT OF THE PETITIONERS.

INTEREST OF THE AMICUS CURIAE.*

1. The Chamber is a federation consisting of a membership of over 3,700 state and local chambers of commerce and trade and professional associations, a direct business membership in excess of 38,000 and an underlying membership of approximately 5,000,000 business firms and individuals. It is the largest association of business and professional organizations in the United States.

2. The Chamber regularly represents the interests of its member-employers in important labor relations matters vitally affecting those interests. Such representation constitutes a significant aspect of the Chamber's functions. Accordingly, the Chamber has sought to advance those interests in a wide spectrum of labor relations litigation.**

3. The questions presented in the instant case are matters of continuing importance to the Chamber. The question raised by the parties is whether a state court has jurisdiction in a suit under Section 301 of the Labor-Management Relations Act (29 U. S. C. 185) to enjoin a work stoppage which constitutes not only a violation of the contractual duty not to strike but also is arguably an unfair labor practice. The court

* Consents of all parties to the Chamber's participation have been filed with this Court.

** *E.g., Gateway Coal Company* v. *United Mineworkers of America, et al.*, ... U. S. .... (Jan. 1974); *Super Tire Engineering Company, Supercap Corporation and A. Robert Schaevitz* v. *Lloyd W. McCorkle, et al.* (Supreme Court), No. 72-1554; *Marco DeFunis and Betty DeFunis, his wife; Marco DeFunis, Jr. and Lucia DeFunis, his wife* v. *Charles Odegaard, President of the University of Washington, et al.* (Supreme Court), No. 73-235; *N. L. R. B.* v. *Bell Aerospace Company Division of Textron, Inc.* (Supreme Court), No. 72-1598. *Boys Markets* v. *Retail Clerks Union*, 398 U. S. 235 (1970); *N. L. R. B.* v. *The Boeing Company, et al.*, 93 S. Ct. 1952 (1973); *N. L. R. B.* v. *Granite State Joint Board*, 409 U. S. 213 (1972); *N. L. R. B.* v. *Pittsburgh Plate Glass Co.*, 404 U. S. 517 (1971).

below refused to grant injunctive relief until the National Labor Relations Board first determined if the activity was prohibited or protected by the Labor-Management Relations Act. This question is of particular concern to the Chamber and its members since any rule which may emerge will necessarily exert a substantial impact on the ability of these members to enforce a no strike pledge contained in a collective bargaining agreement and to obtain prompt injunctive relief to curtail work stoppages which violate this pledge. The rule articulated by the court below and urged here by the unions will, if adopted, have deleterious ramifications for employers when they look to the courts for expeditious enforcement of no strike commitments. Since virtually every action to enforce no strike commitments will involve the issue of whether the strike is arguably protected or prohibited by the Labor-Management Relations Act (herein also called the Act), if the decision of the court below is adopted, courts will be required to cede their jurisdiction to the National Labor Relations Board with its attendant and unavoidable procedural delays. As a consequence, employers will be deprived of a judicial forum for the expeditious enforcement of no strike commitments. It is the availability of such a forum that is the principal incentive to employers to agree to submit labor disputes to the grievance or arbitral process. The Chamber is, thus, vitally concerned that the question here be properly resolved.

4. There are other questions at least implicitly raised by this case whose answers will have significant impact on labor policy. This Court has an opportunity to reevaluate whether the policy underlying *Garmon*[1] is sound in light of judicial experience and to consider whether this policy should continue, without qualification, to be applied. The amicus urges this Court to consider these questions when deciding this case. Furthermore, just as this Court recognized that a presumption

1. *San Diego Building Trades Council* v. *Garmon*, 395 U. S. 236 (1959).

of arbitrability is necessary to foster the nation's labor policy, so also for the same reason this Court should acknowledge a presumption that arbitration provisions were intended to be final and binding, if this intent is not discernible from their terms. This presumption of finality will preclude lawful strikes over arbitrable disagreements for as long as these arbitration provisions remain in effect. Finally, the amicus urges that this Court find that, an agreement containing a mandatory grievance procedure, which stops short of arbitration, nonetheless requires that no work stoppages occur over disputes required to be submitted to this procedure until this procedure has been exhausted.

Because of its broad representation of employers, the Chamber is in a position to present arguments to the Court which might not otherwise be advanced by the parties.

SUMMARY OF THE ARGUMENT.

This Court has consistently emphasized that the congressional policy favoring the peaceful settlement of industrial disputes is preeminent. To aid in the implementation of this policy, this Court has enunciated its presumption of arbitrability and has held that where a contract imposes upon both parties the duty of submitting grievances to final and binding arbitration, a no strike commitment must be implied with respect to these grievances. To still further the national labor policy this Court should find that there exists a legal presumption that contractual arbitration provisions are final and binding and that work stoppages over arbitrable matters may not legally occur as long as the arbitration provisions remain in effect. In addition, for the same policy considerations, labor organizations must not be permitted lawfully to strike over disputes covered by mandatory grievance procedures, which do not culminate in arbitration, until they fully exhaust these procedures.

Though the policy favoring the arbitration process conflicts in this case with the policy promoting decisional uniformity, as articulated in *Garmon, supra,* the former policy must prevail if the nation's labor policy is to be fostered. Indeed, the policy underlying the preemption doctrine is ripe for reexamination in light of judicial and administrative experience.

ARGUMENT.

A. THIS COURT'S DECISIONS HAVE CONSISTENTLY EMPHASIZED THE CONGRESSIONAL POLICY TO PROMOTE PEACEFUL SETTLEMENT OF INDUSTRIAL DISAGREEMENTS THROUGH ARBITRATION.

1. This Court's Construction of Arbitration and No Strike Commitments Has Been Consistent with the Goal of Fostering Industrial Peace by the Arbitral Process.

The desideratum of the nation's labor policy is to secure collective bargaining agreements by encouraging the contracting parties to eschew work stoppages or lockouts and instead settle their disagreements by the peaceful arbitral process.[2]

This Court has recognized that employers would be reluctant to bind themselves to the obligations of arbitration unless the union entered into a correlative commitment to abstain from work stoppages. Accordingly, to foster the policy encouraging arbitration, this Court has held that a contractual agreement to submit disagreements to final and binding arbitration gives rise to an obligation not to strike over these disputes. The commitment to arbitrate and the duty to refrain from work stoppages are construed as applying coextensively, whether the no strike pledge is expressed in the agreement or implied, absent an unequivocal statement expressing contrary intent contained in the contract.[3] To further stimulate the execution and utilization of arbitration provisions, this Court concluded that Section

2. The national labor policy favoring arbitration has been edicted by Congress. Section 203(d) of the Act (29 U. S. C. Section 173(d)) in part states:

> "Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement."

3. In this Court's words: "Absent an explicit expression of [a contrary] intention, however, the agreement to arbitrate and the duty not to strike should be construed as having coterminous

301(a)[4] empowers federal courts to enjoin violations of a contractual pledge not to strike and, in addition, confirmed that state courts possessed identical powers.[5]

In order to foster maximum utilization of the arbitral process, and thereby to implement Congressional policy, this Court also ruled that under the usual arbitration provisions, every disagreement is arbitrable and, therefore, must not be the cause of a work stoppage, unless the terms of the collective contract unambiguously indicate that a particular matter is to be excluded from coverage under these provisions.[6]

Enunciating this presumption of arbitrability, this Court recognized that a collective agreement cannot comprehend in its terms the manifold situations that will arise during the relationship between the parties, and that the parties, in fact, bargained for the resolution of these unforeseen disagreements by an arbitrator rather than by economic warfare.

As a consequence of the foregoing principles, where an issue exists over whether a particular disagreement is arbitrable, an employer is entitled to secure immediate injunctive relief to halt a work stoppage over this disagreement, even in the absence

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application." *Gateway Coal Company* v. *United Mineworkers of America, et al.*, ... U. S. .... (Jan. 1974). 85 LRRM 2049, 2055.

4. Section 301, Labor-Management Relations Act, 29 U. S. C. Section 185.

5. *Boys Market, Inc.* v. *Retail Clerks' Union, Local 770*, 398 U. S. 235 (1970).

6. According to this Court:

> "In the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail . . . Since any attempt by a court to infer such a purpose necessarily comprehends the merits, the court should view with suspicion an attempt to persuade it to become entangled in the construction of the substantive provisions of a labor agreement, even through the backdoor of interpreting the arbitration clause, when the alternative is to utilize the services of an arbitrator." *United Mineworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U. S. 574, at 584-5 (1960).

of an express contractual no strike commitment.[7] The disagreement whose arbitrability is at issue must be presumed to be arbitrable and there is a duty not to strike over such arbitrable disagreements.[8]

2. In Order to Further the Policy of Industrial Peace Through Arbitration, This Court Should Find That There Exists a Presumption That Arbitral Procedures Are Final and Binding and That Lawful Strikes Over Arbitrable Disputes May Not Occur as Long as the Arbitration Provisions Remain in Effect.

This Court should presume that the parties contemplated that their arbitral procedure will culminate in a decision which will be final and binding, where that intent is unclear from the terms of the collective bargaining agreement, unless the agreement discloses indisputably that the arbitration provisions are not susceptible to that interpretation.[9] This presumption, like the presumption of arbitrability, will promote the peaceful settlement of labor disputes and is consonant with the intent of the parties. Their likely objective, in utilizing their arbitral procedures, is to further their common goal of unimpeded production free from the exacerbations of work stoppages. A no strike pledge is coextensive with an agreement to arbitrate. Where an arbitration procedure terminates in a binding decision, whether by its express terms or by legal presumption, there can be no legitimate work stoppages over arbitrable disagreements as long

7. *Gateway Coal Company* v. *United Mineworkers of America, supra.*

8. Only explicit contractual language stating that the no strike obligation will not be coextensive with the agreement to arbitrate can deprive the employer of his right to this injunctive relief. *Gateway Coal Company* v. *United Mineworkers of America, supra.*

9. The Chamber refers only to "grievance" arbitration, concerning disputes that arise from the contracts' interpretation. The Chamber is not referring to "interest" arbitration, that is, arbitration which is aimed at securing an agreement rather than construing an agreement which already exists and as to whose terms some dispute has arisen.

as the arbitration provisions remain in effect. The decision of the arbitrator is the terminal of the process to resolve disagreements. On the other hand, if the arbitral procedure is found not to produce a binding result, work stoppages can occur with impunity after the parties have fulfilled their contractual commitment to arbitrate; the agreement to refrain from striking will likely last only as long as the parties are involved in the arbitral process. Consequently, the Chamber urges this Court to hold that arbitration procedures will be presumed to culminate in final and binding decisions where they are ambiguous in this respect, unless there exists an express contractual statement manifesting a contrary intent. This holding would assure parties that arbitration commitments will be honored, as long as they remain in effect, as the exclusive means to settle arbitrable disputes, despite any ambiguities that may exist in the terms of these commitments.

3. This Court Should Find That a Union May Not Lawfully Strike Over a Dispute Covered by a Mandatory Grievance Procedure That Does Not Culminate in Arbitration Until It Fully Exhausts This Procedure.

In addition to its arguments heretofore advanced, the Chamber believes that the holding in *Boys Market, supra,* should, if necessary, be expanded to allow employers to enforce broad contractual no strike provisions and to obtain injunctive relief not only when the contract expressly or presumptively provides for binding arbitration, but also when the union is required to invoke a grievance procedure that stops short of binding arbitration. That is, where a union is required by the contract to submit an issue in dispute to a grievance procedure which stops short of binding arbitration, but instead, elects to strike, an injunction against the strike could be acquired and maintained at least until the grievance process was exhausted. Such an interpretation of the no strike-grievance terms is in complete harmony with the parties' intent to forego self-help in primary or sympathetic dis-

putes until the mandatory grievance procedure designed to settle these disputes was fully utilized. In achieving a contract with a broad no strike commitment an employer necessarily provides the union with the quid pro quo of a mandatory grievance procedure and likely with numerous other benefits. In return the employer has attempted to secure labor peace during the contract's term, with the union retaining its right to strike only after it exhausts the mandatory provisions of the grievance procedure. The employer should, therefore, be insulated from all other strikes, including sympathetic strikes when, for example, his employees refuse to cross a picket line established at his plant by another bargaining unit. Since the employees who refuse to cross the picket line have no grievance and have not exhausted the grievance procedure, the employer, if the collective bargaining process is to be respected, must be able to secure prompt equitable relief to halt their work stoppage. See, *Monongohela Power Co.* v. *I. B. E. W., Local 2332*, 484 F. 2d 1209 (CA 4, 1973).

Furthermore, grievance negotiations involving face-to-face confrontations at various union-management levels contribute as much to the voluntary and peaceful settlement of labor disputes as does arbitration; the parties appeal to arbitration only after prior voluntary efforts have failed. Therefore, to require a union to refrain from striking until it fully exhausts the grievance procedure is in complete harmony with the national policy favoring voluntary adjustment of labor disputes, even where the grievance procedure does not provide for binding arbitration. See, *American Airlines* v. *Airline Pilots' Association*, 169 F. Supp. 777 (S. D. N. Y. 1958). There, in an analogous situation, a strike was enjoined pending exhaustion of the mandatory procedures provided by the Railway Labor Act for settlement of labor disputes. These procedures did not require submission of the dispute to final arbitration. Both the statutory procedures and the negotiated but mandatory grievance mechanisms are reflections of the Congressional policy to encourage the orderly settlement of labor disputes. Thus, similar to situations involving these

statutory procedures, the union should be required to exhaust the negotiated grievance procedures before resorting to work stoppages in the face of a broad no strike clause.[10]

This Court's emphasis on the policy of securing labor peace through the utilization of the peaceful arbitral process is apparent from the decisions referred to in this section. In this proceeding, however, the policy favoring arbitration has come into conflict with the policy promoting decisional uniformity as expressed in this Court's *Garmon* decision. The amicus turns to a consideration of which of these policies should prevail.

B. THE POLICY FAVORING PEACEFUL SETTLEMENTS OF INDUSTRIAL DISPUTES THROUGH ARBITRATION HAS GREATER NATIONAL SIGNIFICANCE THAN AND MUST PREVAIL OVER THE POLICY OF PREEMPTION.

1. Courts Must Be Permitted in Suits Under Section 301 to Enjoin Work Stoppages Which Violate No Strike Commitments Notwithstanding That Issues Raised by These Strikes May Also Come Within the N. L. R. B.'s Jurisdiction.

Here the union struck because of a jurisdictional dispute, thereby breaching their no strike commitment and at least arguably violating Section 8(b)4 of the Act. Thus, there exists an overlapping between the traditional jurisdiction of the courts to enforce contracts and that of the Board to administer the Act.[11] In determining whether to sanction state and federal courts to enforce no strike commitments by equitable relief, notwithstanding this overlap between the jurisdiction of the Board and that of the courts, this Court must consider and select one of two doctrines which are here antagonistic to each other. On the one hand is the doctrine of preemption, which was enunciated by this

10. This Court's decision in *Boys Market, supra,* lends significant support to the Chamber's position, when this Court sanctions injunctive relief where the agreement contained an arbitration process or a "mandatory grievance adjustment" procedure, p. 253.

11. *Boys Market* apparently did not involve this circumstance.

Court in *Garmon*.[12] That case held that when activity is either arguably protected or arguably prohibited by the Act, "the states as well as the federal courts must defer to the exclusive competence of the N. L. R. B. if the danger of state interference with national policy is to be averted." (at 245.) The rationale for the *Garmon* rule is the presumed utility of obtaining decisional uniformity in labor controversies by securing an initial decision from the N. L. R. B. on factual or policy issues assigned by Congress to that agency's supposed expertise.[13]

Balanced against *Garmon* is a competing doctrine embodied in Section 301. This doctrine advocates using judicial power to enforce collective bargaining agreements. The purpose of Section 301 was to augment the forums available for the enforcement of these agreements; that is, to supplement the existing state forums with the federal courts.[14] Underlying this doctrine was the congressional determination to promote the cause of industrial peace through betterment of the collective bargaining process. To this end it was paramount that both partners in the collective contract have confidence that the terms of the contract they negotiated could be easily enforced. Section 301, then, is a reflection of congressional awareness that

12. *San Diego Building Trades Council* v. *Garmon, supra.* Here a union picketed an employer in an effort to pursuade customers to cease doing business with him. The lower court held that the purpose of the picketing was to compel the employer to sign a union shop contract, though a majority of his employees had not selected the union as their representative. That court enjoined the picketing and awarded damages. This Court refused to permit either the equitable or the compensatory relief on the grounds that the issues raised by the picketing were within the exclusive competence of the N. L. R. B.

13. The preemption of state power to establish substantive rules of law which might conflict with the Act produced the corollary of exclusive N. L. R. B. jurisdiction, in order that other tribunals, while attempting to enforce Federal substantive rights, would not inadvertently misapply them. *Garner, et al.* v. *Teamsters, Chauffeurs and Helpers Local Union No. 776(AFL), et al.*, 346 U. S. 485 (1953). Sovern, *Section 301 and The Primary Jurisdiction of the N. L. R. B.*, 76 Harv. L. Rev. 529, 546 (1962-63).

14. *Charles Dowd Box Co.* v. *Courtney*, 368 U. S. 502 (1962).

there must be accessable forums and facile methods to enforce collective contracts if the bargaining procedure is to enjoy the full confidence of its participants.

The policies underlying *Garmon* and Section 301 could not coexist without one being impared in situations where a party opposes judicial enforcement of a collective agreement on the ground that the conduct alleged to have breached that argument is also arguably within the N. L. R. B.'s exclusive jurisdiction. An early case which considered which of these doctrines would prevail was *Cameron Iron Works*.[15] There an employer discharged several of his employees who had participated in a strike. When the union sued under Section 301 to enforce the arbitration provisions on its contract, the employer responded by urging that the N. L. R. B. had exclusive jurisdiction to try the case in as much as the discharges were arguably violations of the Act. The court rejected this defense. After observing that it is "commonly known" that the Board's decisions "are slow in forthcoming" the court stated:

> "Certainly, if an otherwise arbitrable controversy happens also to be an unfair labor practice, the parties should not be forced to abandon their contract right and be relegated 'to the slow and creaking procedure which, like a wounded snake, has dragged its slow length along, sans bargaining, sans labor peace, sans everything but pride of opinion, illtemper and frustration.' . . . Enforcement of a contract to arbitrate grievances is different from an adjudication of an unfair labor practice by the National Labor Relations Board . . . [the *Lincoln Mills* case] did establish two broad principles: first, that the United States district courts have the unequivocal statutory power to decree specific performance of collective bargaining contracts to arbitrate; and, second, that private arbitration in the labor-management field is to be afforded broad liberties." at page 531-532.

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15. *Lodge 12, International Association of Machinists* v. *Cameron Iron Works, Inc.*, 257 F. 2d 467 (CA 5, 1958) cert. denied 358 U. S. 880 (1958).

The Court then held that a court could enforce the contract notwithstanding that the same conduct constituted both an unfair labor practice and a breach of the contract's arbitration provisions. Before this Court was required to address this issue, other lower courts also were holding that courts could not be ousted of their jurisdiction to adjudge a cause under Section 301(a) merely because the activity, if proven, constituted both a contract breach and an unfair labor practice.[16]

It was not long, however, before this Court confronted the clash which arose when the restrictions of *Garmon* abutted the privileges bestowed by Section 301. In *Lucas*,[17] *Dowd*[18] and *Smith*,[19] this court addressed itself to balancing the competing policies which underlay these two doctrines and to formulating a rule which would implement the desires of Congress in the area of collective bargaining. In *Lucas*, a labor organization struck to compel the employer to reinstate an employee who had been discharged because of his unsatisfactory performance. The employer alleged that the strike violated the collective bargaining contract in effect between him and the striking union, and sought damages under Section 301(a) for business losses caused by the strike. *Dowd* presented a situation where the employer reneged on an agreement to institute changes in employment conditions and the union sued for damages in conformity with the wage provisions of the contract. In *Smith*, the employer had discriminated against several employees because of their union membership and these employees brought a damage action against him for violating his contract's ban against discrimination because of an employee's union activity. In each of these three cases the

16. See *Independent Petroleum Workers, etc.* v. *ESSO Standard Oil Co.*, 235 F. 2d 401 (CA 3, 1956); *Textile Workers* v. *Arista Mills Co.*, 193 F. 2d 529 (CA 4, 1951); *Cuneo Press Inc.* v. *Kokomo Paper Handlers' Union No. 34, et al.*, 235 F. 2d 108 (CA 7, 1956).

17. *Local 174, Teamsters Union* v. *Lucas Flour Co.*, 369 U. S. 95 (1962).

18. *Charles Dowd Box Co.* v. *Courtney, supra.*

19. *Smith* v. *Evening News Association*, 371 U. S. 195 (1962).

cause was brought in a state court. In each, the defendant urged that the conduct which constituted the breach of contract also was arguably protected (*Lucas*) or prohibited[20] (*Dowd* and *Smith*) by the Act and, therefore, the entire case was within the exclusive jurisdiction of the Board.

This Court, however, responded to this contention and held that state courts may adjudicate upon any claim for damages brought under Section 301 for breach of contract even though the conduct involved makes out not only a violation of the contract but also an unfair labor practice.[21]

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20. The strike in *Lucas* was at least arguably protected by the Act in as much as the union denied that its work stoppage violated its collective bargaining agreement. In addition, in its Petition for Writ of Certiorari page 11, the Union urged that the strike was arguably an unfair labor practice and that for this additional reason the state court lacked jurisdiction to determine the union's liability based upon tort. In *Dowd* the employer's conduct amounted to an unlawful refusal to bargain, and the employer so acknowledged in his brief to this Court. Sovern, *Section 301 and the Primary Jurisdiction of the N. L. R. B., supra* at 536, 537.

21. *Lucas* indicates that this Court was considering conduct which violated the Act while also violating a collective bargaining agreement. In n. 9, page 101, this Court stated:

> "Since this was a suit for violation of a collective bargaining contract within the purview of Section 301(a) of the Labor Management Relations Act of 1947, the pre-emptive doctrine of cases such as *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236, based upon the exclusive jurisdiction of the National Labor Relations Board, is not relevant. . . . Congress 'deliberately chose to leave the enforcement of collective agreements "to the usual processes of the law," ' . . . It is, of course, true that conduct which is a violation of a contractual obligation may also be conduct constituting an unfair labor practice, and what has been said is not to imply that enforcement by a court of a contract obligation affects the jurisdiction of the N. L. R. B. to remedy unfair labor practices, as such." (Citations omitted.)

Moreover, four of the five cases favorably cited in that footnote, including *Cameron Iron Works, supra* and *ESSO Standard Oil Co., supra,* dealt with a situation where the courts held that they could not be ousted of their jurisdiction to hear and determine the cases merely because the actions complained of constituted not only a breach of contract but also arguable unfair labor practices. See

[Continued on next page]

In these decisions this Court did not explicate its reasons for its conclusions. However, it appears that particularly in *Lucas* this Court recognized that parties will bind themselves to the obligations of arbitration, and thereby further the Congressional policy favoring this process only if collective bargaining agreements may be judicially enforced, without administrative delay, against those who choose to utilize self-help rather than the agreed upon arbitral procedures. This Court also apparently reasoned that the application of the *Garmon* doctrine to Section 301 suits would seriously hinder the necessary expeditious enforcement since courts would be ousted of their traditional powers[22] to remedy contract violations at least until the Board

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also Sovern, *Section 301 and the Primary Jurisdiction of the N. L. R. B., supra* at 538.

Smith v. *Evening News* explicitly held that:

> "*Lucas Flour* and *Dowd Box*, as well as the later *Atkinson* v. *Sinclair Refining Co.*, 370 U. S. 238, 50 LRRM 2433, were suits upon collective bargaining contracts brought or held to arise under Section 301 of the Labor Management Relations Act and in these cases the jurisdiction of the courts was sustained although it was seriously urged that the conduct involved was arguably protected or prohibited by the Labor Management Relations Act and therefore within the exclusive jurisdiction of the National Labor Relations Board. In *Lucas Flour* as well as in *Atkinson* the Court expressly refused to apply the pre-emption doctrine of the *Garmon* case; and we likewise reject that doctrine here where the alleged conduct of the employer, not only arguably, but concededly, is an unfair labor practice within the jurisdiction of the National Labor Relations Board. The authority of the Board to deal with an unfair labor practice which also violates a collective bargaining contract is not displaced by Section 301, but is not exclusive and does not destroy the jurisdiction of the courts in suits under Section 301." (Footnotes omitted.) At page 197.

These principles have been expressly reaffirmed in *Amalgamated Association of Street, Electric Railway and Motorcoach Employees* v. *Lockridge*, 403 U. S. 274 (1971). This Court there observed that state courts retained concurrent jurisdiction with the Board to entertain claims where the conduct alleged was arguably protected or prohibited by the Act and constituted a breach of contract.

22. This Court also recognized that in 301 actions state and federal courts must only interpret the collective bargaining agreement and not the Board's rules on protected or prohibited activity. That is, the courts must decide not whether particular activity is

determined its own jurisdiction over the conduct which was alleged to have breached the collective bargaining agreement and to have violated the Act.[23]

While *Lucas, Dowd,* and *Smith* involved damage actions, the policy reasons disfavoring the importation of the *Garmon* rule to the 301 area are equally compelling when an aggrieved party seeks equitable relief from a strike which violates his collective bargaining agreement. This Court's recognition that state courts can give injunctive relief coupled with the recent sanction to federal courts to grant this relief reflects the judgment that a "prompt preventive remedy" for contract violations is essential to the national labor policy favoring arbitration. It is the ready availability of injunctive relief to curtail a strike in violation of the agreement rather than the possibility of damages after a labor dispute is settled that is the real and necessary incentive to employers to enter into commitments to submit these disputes to

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arguably protected or prohibited but rather whether a no strike pledge in a collective bargaining agreement was intended by the parties to preclude resort to self-help. Consequently, the traditionally recognized judicial competence to make these contractual decisions may be preserved even though statutory as well as contract issues are raised by conduct alleged to have violated an agreement's no strike clause; courts may dispose of Section 301 actions by preventive or compensatory relief without waiting for the Board to determine if particular activity is protected or prohibited by the Act. The Board would not be bound by the court's decision and, though discordant court and Board decisions might occasionally result if the Board believes previously enjoined conduct is protected, the recognized emphasis on arbitration as a means to settle contractual disputes and the resultant necessity for speedy enforcement of no strike pledges justifies this risk. Meltzer, *The Supreme Court, Congress, and State Jurisdiction Over Labor Relations,* 59 Colum. L. Rev. 269 at 288 (1959).

23. Virtually every suit to enforce a no strike pledge will involve issues of whether the activity is arguably protected or prohibited by the Act. A union may acknowledge that it committed an unfair labor practice and assert the preemption defense, or may contend that its strike does not violate the contract because *e.g.,* it responds to an unfair labor practice by the employer. If the strike is not prohibited by the contract it would be normally protected by the Act. Sovern, *Section 301 and the Primary Jurisdiction of the N. L. R. B. supra* at 536.

the peaceful processes of arbitration. Indeed, an employer's losses after an illegal strike are difficult to calculate because his damages will likely include not only production or distribution losses but also the incalculable loss of customer good will due to the strike caused inability to meet business commitments.[24] If due to concern for decisional uniformity the *Garmon* principle is applied when a party turns to a court for injunctive relief from a contract breach, the delays inherent in the Board's machinery will be imported into the courts. Labor organizations that have breached no strike commitments can defend their action by asserting that the strike is protected or prohibited by the Act.[25] If the courts are then required to refrain from exercising their power to grant equitable relief until the Board has first passed on these contentions, the power to grant such relief is for all practical purposes rendered nugatory due to the unavoidable Board delays, and the employer's incentive to enter into arbitration agreements is necessarily deadened; the Congressional policy favoring the voluntary establishment of arbitration procedures for the resolution of labor disputes is thereby frustrated.

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24. As this Court recognized in *Gateway Coal Company, supra*:

> "[A]n award of damages after a dispute has been settled is no substitute for an immediate halt to an illegal strike. Furthermore, an action for damages prosecuted during or after a labor dispute would only tend to aggravate industrial strikes and delay an early resolution of the difficulties between employer and union." Note 14, quoting *Boys Market, supra*, 398 U. S. at 248. (85 LRRM at 2054)

Professor Cox's observations are to the same effect:

> "An injunction is the only practical relief against a strike. Damages are inadequate because the injury to the business cannot be measured accurately. Furthermore, an employer can rarely afford to exacerbate labor-management relations by suing a union made up of his employees after the end of the strike." Cox, *Current Problems in the Law of Grievance Arbitration*, 30 Rocky Mt. L. Rev. 247, 255 (1958).

The foregoing assumes that the striking union has adequate funds to pay a judgment. Too often the union's coffers are insufficient to meet the judgment against them.

25. See Note 20 *supra*.

2. Preemption Has Yielded to Policies of Superior Importance in Situations Other Than Those Arising Under Section 301.

(a) This Court and Congress Have Required Preemption to Yield to More Pressing Problems.

The *Garmon* rules are not a "complete and self-sufficient test of federal preemption . . ."[26] and the courts and Congress have demonstrated a willingness to sacrifice the principle of exclusive Board jurisdiction when its application would frustrate other more important policies.[27] There are manifold circumstances in addition to damage claims under Section 301 in which the activity is arguably within the scope of the Act but, nevertheless, courts or tribunals other than the Board may assert initial jurisdiction.

Congress has mandated a significant exception to the exclusivity of N. L. R. B. jurisdiction when it enacted Section 303 of the Act.[28] By this section's provisions the enforcement of cases involving the extremely complex concepts embedded in work assignment disputes (such as the dispute involved in this

26. Cox, *Labor Law Preemption Revisited*, 85 Harv. L. Rev. 1337, 1364 (1972).

27. Sovern, *Section 301 and the Primary Jurisdiction of the N. L. R. B., supra* at 550.

28. "(a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 8(b)(4) of the National Labor Relations Act, as amended.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefore in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover damages by him sustained and the cost of the suit." 61 Stat. 158 (1947), 29 U. S. C. Section 187 (1958), as amended, 73 Stat. 545 (1959), 29 U. S. C. Section 187 (Supp. I, 1962).

proceeding) and secondary boycotts is initially entrusted to the competence of the courts.[29]

In addition to Section 303, Congress recognized that it was desirable to further delimit *Garmon* by amending Section 14 of the Act. With this amendment state courts and agencies may "assert jurisdiction over any labor dispute . . .[if] the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of [the Board's] jurisdiction . . ."[30]

Beyond the Congressionally created limits to the *Garmon* doctrine, this Court has recognized that state tribunals may assert initial jurisdiction over matters which compellingly concern them notwithstanding that these matters are at least arguably embraced by the terms of the Act. For example, states have been permitted to grant injunctive relief[31] or award compensatory or punitive damages[32] to remedy tortious conduct including libel,[33] violence,[34] and obstructive[35] or mass picketing.[36] While it is possible that the nature and quantity of evidence a plaintiff must produce to sustain his case will differ from state to state, the "interest in uniformity is subordinated to the

29. In 1959 when Congress expanded the scope of Section 8(b)(4) of the Act, it also expanded 303 (29 U. S. C. Section 158, 1959) despite the fact that inconsistent decisions by the Board and a court had been made. Compare *N. L. R. B.* v. *Deena Artware, Inc.*, 198 F. 2d 645 (CA 6, 1952) cert. denied, 345 U. S. 906 (1953), with *United Brick and Clay Workers* v. *Deena, Artware, Inc.*, 198 F. 2d 637 (CA 6, 1952) cert. denied, 344 U. S. 897 (1952). Sovern, *Section 301 and The Primary Jurisdiction of the N. L. R. B., supra* at 549-550.

30. 29 U. S. C. Section 164.

31. *International Union, U. A. W.* v. *Wisconsin Employment Relations Board*, 351 U. S. 266 (1956), *Taggart* v. *Weinacker's, Inc.*, 397 U. S. 223 (1970).

32. *United Construction Workers* v. *Laburnum Construction Corp.*, 347 U. S. 656 (1954).

33. *Linn* v. *Plant Guard Workers*, 383 U. S. 53 (1966).

34. *United Automobile Workers* v. *Russell*, 356 U. S. 634 (1958).

35. *Taggart* v. *Weinacker's, Inc., supra.*

36. *Electrical Workers* v. *Wisconsin Employment Relations Board*, 315 U. S. 740 (1942).

larger interests" that persons injured by such conduct may enjoy whatever remedies state law may authorize.[37]

In addition, this Court has permitted an individual to press his claim of unfair representation against his union[38] in a state court, through a union's breach of its duty to fairly represent employees in its bargaining unit has been held to be an unfair labor practice by the Board.[39] While application of *Garmon* would have required dismissal of that employee's suit, this Court refused to employ the preemption doctrine. Although one reason for rejecting preemption was that the duty of fair representation had been judicially developed, this Court was also concerned that the N. L. R. B.'s preoccupation for the public interest could deny the aggrieved individual an impartial review of his complaint.

The cumulative effect of the foregoing is that the jurisdiction of one forum, here the state court, is not "displaced simply because the Board also has jurisdiction to act."[40] The preemption doctrine has succumbed to policies more pressing, such as fostering the arbitral process.

(b) The N. L. R. B. Has Voluntarily Yielded Its Jurisdiction to Further the Policy Favoring Arbitration.

In addition to Congressional and judicial inroads to the preemption policy, the Board itself has willingly yielded its jurisdiction to an arbitrator both by deferring to prospective arbitration and by refraining from overturning arbitration awards. In its *Collyer*[41] decision and opinions following upon that case, the

37. *Amalgamated Association of Street, Electric Railway and Motorcoach Employees of America, etc., et al.* v. *Lockridge, supra* dissenting opinion of Justice White at page 318.

38. *Vaca* v. *Sipes,* 386 U. S. 171 (1967).

39. *Miranda Fuel Co.,* 140 NLRB 181 (1962).

40. *Amalgamated Association of Street, Electric Railway and Motorcoach Employees of America, etc., et al.* v. *Lockridge, supra,* dissenting opinion of Justice White at page 313.

41. *Collyer Insulated Wire,* 192 NLRB No. 150 (1971).

Board has held that deferral of issues involved in an unfair labor practice charge to prospective arbitration is warranted when it is reasonably probable that the issues raised by the charge could be resolved under the contract's arbitral procedures. Thus, in *Collyer* the Board relinquished its jurisdiction because the unfair labor practice and arbitration issues both turned on the meaning of disputed contract provisions. Moreover, *Collyer* has spawned decisions which demonstrate that the Board has expanded the category of cases which may be deferred to prospective arbitration. In *National Radio Co.*[42] an allegation of unlawful discharge was deferred though the Board acknowledged that the justification for deferral did not "rest on any presumed primacy of an arbitrator to interpret an ambiguous or contested contract provision". Nonetheless, the Board held that arbitration under the contractual provision prohibiting discipline for other than "just cause" would lead to a resolution of the dispute "which will not be 'repugnant to the purpose and policies of the Act' ". In the words of the Board:

> "[A]n asserted wrong is remediable in both a statutory and a contractual forum. Both jurisdictions exist by virtue of congressional action, *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U. S. 448, . . . and our duty to serve the objectives of Congress requires that we seek a rational accommodation within that duality. We may not abdicate our statutory duty to prevent and remedy unfair labor practices. Yet, once an exclusive agent has been chosen by employees to represent them, we are charged with a duty fully to protect the structure of collective representation and the freedom of the parties to establish and maintain an effective and productive relationship . . . We are . . . adjuring the parties to seek resolution of their dispute under the provisions of their own contract and thus fostering both the collective relationship and the Federal policy favoring voluntary arbitration and dispute settlement."[43]

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42. 198 NLRB No. 1.

43. In *Eastman Broadcasting Co.*, 199 NLRB No. 58 (1972), the Board restated its *Collyer* rule and held that it will defer to prospective arbitration when:

[Continued on next page]

In addition to abstaining in favor of prospective arbitration, the Board has yielded to arbitration awards based upon activity which is also alleged to be an unfair labor practice, in order to comply with the policy favoring the settlement of disputes through the machinery of arbitration. The Board has stated:

> "If complete effectuation of the Federal policy is to be achieved, we firmly believe that the Board, which is entrusted with the administration of one of the many facets of national labor policy, should give hospitable acceptance to the arbitral process as 'part and parcel of the collective bargaining process itself,' and voluntarily withhold its undoubted authority to adjudicate alleged unfair labor practice charges involving the same subject matter, unless it clearly appears that the arbitration proceedings were tainted by fraud, collusion, unfairness, or serious procedural irregularities or that the award was clearly repugnant to the purposes and policies of the Act."[44]

Thus, in order to contribute to the furtherance of the federal policy favoring voluntary arbitration and dispute settlement, the Board, itself, has voluntarily relinquished its primary jurisdiction to the arbitral process adjuring the parties to resolve their disputes under the provisions of their contract. The identical policy considerations require this Court to permit state and lower federal courts to assert initial jurisdiction over a party's claim for *equitable* relief under Section 301, notwithstanding the fact that the claim may give rise to issues that are protected or prohibited by the Act. If instead of according initial jurisdiction to the

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> "(1) the disputed issues are, in fact, issues susceptible of resolution under the operation of the grievance machinery agreed to by the parties, and (2) there is no reason for us to believe that use of that machinery by the parties could not or would not resolve such issues in a manner compatible with the purposes of the Act."

In *The Associated Press*, 199 NLRB No. 168 (1972) the unfair labor practices deferred for prospective arbitration under the *Collyer* doctrine included allegations that Sections 8(a)(2) and 8(b)(2) had been violated.

44. *International Harvester*, 138 NLRB 923, 927 (1962).

courts, *Garmon* is applied, the parties are deprived of a forum for the expeditious enforcement of no strike pledges;[45] the existence of such a forum is essential if agreements containing arbitration provisions are to be negotiated and thereafter respected.[46]

3. The Policy of Preemption Should Be Reexamined.

The experience of this Court since *Garmon* warrants a reevaluation of that decision. Since, or in spite of, *Garmon* parties have been encouraged by this Court, by Congress and by the Board, itself, to seek other forums if the activities which constitute an unfair labor practice violate the collective bargaining agreement, arise in an arbitrable dispute, or otherwise qualify as one of the exceptions mentioned above. Furthermore, courts have developed increasing expertise in dealing with matters that constitute unfair labor practices. In addition, *Garmon* unhappily fails to distinguish between activity which is arguably prohibited and activity which is arguably protected by the Act. For the latter, there is no provision for an initial decision by the Board. The *Garmon* doctrine, nonetheless, preempts other tribunals.[47]

45. For example see *Cameron Iron Workers, supra.*

46. In *Von Hoffman* v. *City of Quincy*, 71 U. S. (4 Wall.) 535 (1866), Judge Swain observed:

> "Nothing can be more material to the obligation than the means of enforcement. Without the remedy the contract may, indeed, in the sense of law, be said not to exist, and its obligation to fall within the class of those moral and social duties which depend for their fulfillment wholly upon the will of the individual. The ideas of validity and remedy are inseparable, and both are parts of the obligation, which is guaranteed by the Constitution against invasion." at 552.

47. In the words of Deputy Associate General Counsel Come,

> "[A]pplication of the Garmon arguably protected test in this situation leaves the employer's interests in an unsatisfactory condition. The employer cannot obtain relief from the state court with respect to activity that may in fact not be protected by section 7 of the Act, and the only way that he can obtain a Board determination of that question is by resorting to self-help measures; if he guesses wrong, this may subject him not only to a Board remedy but also to tort suits. The result is as

In view of these considerations, the Chamber urges the Court to reconsider whether it is still practical to apply the principles of *Garmon* in areas where there is an actual or potential overlap between the jurisdiction of the courts and that of the N. L. R. B.[48]

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undesirable as the 'noman's land' created by the holding in Guss. . . ." (Footnotes omitted). Come, Federal Preemption of Labor-Management Relations: Current Problems in the Application of Garmon, 56 Va. L. Rev. 1435, 1444 (1970).

See also the dissenting opinion of Justice White in *Amalgamated Association of Street, Electric Railway and Motorcoach Employees of America, etc., et al.* v. *Lockridge, supra,* pp. 326-328.

48. In a recent article, Professor Cox refers to *Taggart* v. *Weinacker's, Inc., supra,* as an example of the high price employers must pay if the principles of *Garmon* continue to be applied. In *Weinacker's* a union picketed on the employer's property. A state court enjoined this picketing, at least partly because the pickets were trespassers. Had *Garmon* been applied, the state action would have been dismissed immediately because the picketing was at least arguably protected by the Act. However, the ouster of state court jurisdiction would have resulted in a complete denial of legal or equitable remedies to the employer; the employer could not secure a timely ruling from the Board on whether the picketing was protected or not; there was no hope of securing Board relief. Only if the employer precipitated litigation by punishing the picketers and if the union or employees then filed unfair labor practice charges, could the employer secure a Board ruling which would then be too late to be of any use. According to Cox, the cost of denying an employer relief in such situations is an "extraordinarily heavy price to pay in order to avoid the danger that state tribunals may sometimes err . . . " by granting relief in situations where relief would be barred by the Act. In Cox's words,

> "The short of the matter, therefore, is that in order to avoid the risk of a state court misinterpretation or misfinding, the 'arguably protected' rule shuts the door to determination of the question, and thus denies the hope of remedy for what might well turn out to be a substantive wrong. In effect, it denies the employer a day in court." Cox, *Labor Law Pre-emption Revisited, supra,* 1363, 1360-1363.

In an effort to remove the roadblock to an employer's rights in the situation discussed by Cox and Deputy Associate General Counsel Come (footnote 47), the Board would do well to abstain from asserting jurisdiction in cases where picketing or other conduct, while arguably protected by the Act, nonetheless violates state laws such as trespass. Such abstentian would be little different than deferring to arbitration inasmuch as the state courts have a recognized expertise to deal with matters of state concern. See, for example, *Scott Hudgens* v. *N. L. R. B.* (Civil No. 73-3264, CA 5).

4. Courts Must Be Permitted Under Section 301 to Enjoin Strikes Over Work Assignment Disputes, Even Though Issues Raised by These Strikes Come Within the N. L. R. B.'s Jurisdiction.

While a refusal to apply the policy of preemption to arbitral disputes will generally further the preeminent policy favoring peaceful and voluntary settlement of industrial disputes, it is particularly appropriate in the present case involving a jurisdictional or work assignment dispute to permit the state court to promptly enjoin the illegal strike though a violation of the Act is also arguably involved.

The Act, in Section 10(k) (29 U. S. C. 160(k)), establishes a special procedure dealing with jurisdictional disputes:

> "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed."

The Board has expressly understood Section 10(k) to deprive it of jurisdiction in such cases. In *Laborers, Local 423*,[49] the Board said:

> "However, the thrust of Section 10(k) of the Act is to forbid the Board to settle the jurisdictional dispute only upon a showing of a method agreed upon by the parties of settling the dispute, . . .
>
> If we retained jurisdiction in this case, the statutory purpose to encourage the voluntary settlement of jurisdic-

49. 199 NLRB No. 48 (1972).

> tional disputes would be frustrated in that a party receiving an adverse decision from the agreed-upon tribunal for settling its jurisdictional dispute would be encouraged to ignore such decision, lapse into noncompliance, and then come before this Board for a more favorable resolution of the dispute."

In addition, this Court has observed that "the Board, as admonished by Section 10(k), has often given effect to private agreements to settle disputes of this character; and that is in accord with the purpose . . . 'that full opportunity is given the parties to reach a voluntary accommodation without governmental intervention if they so desire.' "[50] Inasmuch as the facts of this case demonstrate that the parties have agreed upon a method of settling their jurisdictional dispute, the Board by its own decisional policy has deprived itself of further jurisdiction. Permitting the state court to enforce the collective bargaining agreement by initially enjoining the work stoppage in breach thereof is in accord not only with the basic national labor policy but also with the decisional policies of the National Labor Relations Board itself.

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50. *Carey* v. *Westinghouse Electric Corp.*, *supra* at pages 264-265 footnote and citations omitted.

CONCLUSION.

For the foregoing reasons, it is respectfully urged that the Decision and Order of the Supreme Court of Florida be reversed.

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SUPREME COURT, U. S.

MAR 1 1974

MICHAEL RODAK, JR., CLERK

In The
Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-466

WILLIAM E. ARNOLD COMPANY,
A Florida Corporation,

Petitioner,

-vs-

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY ANY THROUGH JOHN H. SEA, BUSINESS REPRESENTATIVE THEREOF; AND CARPENTERS LOCAL UNION NO. 627, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH EARL S. HUFF, ASSISTANT REPRESENTATIVE THEREOF.

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

RESPONDENT'S BRIEF

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In The
Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-488

WILLIAM E. ARNOLD COMPANY,
A Florida Corporation,

Petitioner,

-vs-

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY ANY THROUGH JOHN H. SEA, BUSINESS REPRESENTATIVE THEREOF; AND CARPENTERS LOCAL UNION NO. 627, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH EARL S. HUFF, ASSISTANT REPRESENTATIVE THEREOF.

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

RESPONDENT'S BRIEF

QUESTION PRESENTED FOR REVIEW

DOES A STATE COURT HAVE INITIAL JURISDICTION TO ENJOIN AN UNFAIR LABOR PRACTICE WHICH IS ALSO A BREACH OF A COLLECTIVE BARGAINING CONTRACT, WHERE THERE IS NO MANDATORY ARBITRATION CLAUSE CONTAINED THEREIN?

STATEMENT OF THE CASE

The Respondent herein would accept as being basically correct Petitioner's Statement of the Case presented on pages 4 through 8 of the Brief for the Petitioner.

ARGUMENT

INTRODUCTION

The case at bar presents two important areas of Federal labor law for this Court's consideration. One is the question of injunctive relief in breach of collective bargaining agreements, and the other is the federal preemption doctrine as has developed insofar as Sections 7 and 8 of the National Labor Relations Act., 29 U.S.C. §157 and 158.

Both have been considered in prior cases decided by this Court. The question of Federal preemption of this area of the law was discussed in *Garner v. Teamsters etc., Union*, 346 U.S. 485, 74 S. Ct. 161, 98 L. Ed. 228, *Weber et al. v. Anheuser Busch, Inc.*, 348 U.S. 468, 75 S.Ct. 480, 99 L. Ed. 546, and *San Diego Building Trades Council Etc. v. Garmon*, 359 U.S. 236, 79 S. Ct. 773.

The question of injunctive relief for breach of no-strike clauses in collective bargaining contracts was discussed by this Court in *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 82 S. Ct. 1328, 8 L. Ed. 2d 440, wherein this Court expressed the view that the Norris-La Guardia Act, 29 U.S.C. §140, prohibited Federal courts from granting injunctive relief, and then re-evaluated by this Court in *Boys Markets, Inc. v. Retail Clerks Union Local 770*, 398 U.S. 235, 90 S. Ct. 1583, 26 L.Ed. 2d 199.

In the case at bar, a jurisdictional dispute arose between the Carpenters Union and the Lathers Union as to which should be awarded certain work at the construction site. The Carpenters Union was under contract to the Petitioner, the William E. Arnold Company, the general contractors. One of Arnold's sub-contractors had a contract with the Lather's Union, and being in charge of this particular area of construction, awarded the disputed work to the Lathers Union. A couple of days later, the Carpenters went on strike against the William E. Arnold Co., and the instant case was initiated.

The record is completely silent as to what steps were taken by either the Company or the Respondent Union insofar as attempting to comply, or complying with, the dispute settlement provisions of the no-strike clause contained in Article VI of the collective bargaining contract. The record is also silent as to whether the Lathers Union was willing to participate in these procedures.

Under this set of facts, the Supreme Court of Florida followed its own prior law as set forth in *Scherer and Sons, Inc. v. International Ladies Garment Workers Union Local 415*, 142 So. 2d 290 (Fla. 1962) where it stated at p. 293:

"It must be conceded, however, that where a given

> situation is 'arguably subject' to the prohibitions or protections of the Taft Hartley Act, the Federal government has preempted state action, at least to the extent of conveying to the National Labor Relations Board the initial jurisdiction to determine the applicability of the Federal law."

This policy was affirmed in *Sheetmetal Workers International Association v. Florida Heat and Power, Inc.*, 230 So. 2d 154 (Fla. 1970) which involved a suit for injunctive relief. Thus, this has been the law in the State of Florida for at least the past 12 years.

It is also the law of the United States as enunciated in *Garner*, supra, *Weber*, supra, and *Garmon*, supra.

It can be seen then that the decision rendered by the Supreme Court of Florida did not cause an upheaval of the law in the State of Florida, but rather merely reaffirmed the law as it had been in that state.

THE QUESTION OF FEDERAL PREEMPTION

In the case presently before the Court, the Florida Supreme Court held that the collective bargaining contract involved herein was an insufficient ground upon which an evasion of *Garmon*, supra, could be justified, stating at (P. App. 11a) 279 So. 2d 300, 302:

> "The decisive issue is whether or not the activity enjoined is arguably an unfair labor practice, not whether it is also a breach of contract.
>
> In cases such as this one, where the National Labor Relations Board has exclusive jurisdiction because of

> the unfair labor practice involved, the Board may decline to assume jurisdiction either by rule of decisions or by published rules adopted pursuant to the Administrative Procedure Act, after which state courts may then assume jurisdiction. In our view, the National Labor Relations Board decision (citing *Laborer's Local 670*, 189 NLRB 98, 76 LRRM 1794) does not have the effect of declining jurisdiction. In that case the Board held only that it cannot decide disputes over union jurisdiction where the parties have agreed to arbitrate those disputes. The case does not hold that the Board cannot or would not: (1) order the parties to arbitrate as agreed, or (2) issue a cease and desist order against a federally prohibited strike arising out of the dispute."

The language of this Court's opinion in the *Garner*, supra, *Weber*, supra, and *Garmon*, supra, cases is very clear. In *Weber* supra, this Court held at 348 U.S. 469, 481:

> "We realize that it is not easy for a state court to decide, merely on the basis of a complaint and answer, whether the subject matter is the concern exclusively of the federal Board and withdrawn from the State . . . But where the moving party itself alleges unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct, if not prohibited by the Act, may be reasonably deemed to come within the protection afforded by that Act, the State court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance."

Reaffirming this position, this Court pointed out very carefully in *Garmon*, supra, 359 US 236, 243, 244:

> "Administration is more than a means of regulation; administration is regulation. We have been concerned with conflict in its broadest sense; conflict with a complex and interrelated federal scheme of law, remedy, and administration. Thus, judicial concern has necessarily focused on the nature of the activities which the States have sought to regulate, rather than on the method of regulation adopted. When the exercise of state power over a particular area of activity threatened interference with the clearly indicated policy of industrial relations, it has been judicially necessary to preclude the States from acting. However, due regard for the presuppositions of our embracing federal system, including the principle of diffusion of power not as a matter of doctrinaire localism but as a promoter of democracy, has required us not to find withdrawal from the States of power to regulate where the activity regulated was a merely peripheral concern of the Labor Management Relations Act. . . . . Or where the regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, we could not infer that Congress had deprived the States of the power to act.
>
> ***When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by §7 of the National Labor Relations Act, or constitute an unfair labor practice under §8, due regard for the federal enactment requires that State jurisdiction must yield*** . . . . . .

> At times it has not been clear whether the particular activity regulated by the States was governed by §7 or §8 or was, perhaps, outside both these sections. *But courts are not primarily tribunals to adjudicate such issues. It is essential to the administration of the Act that these determinations be left in the first instance to the National Labor Relations Board."*
> (Emphasis supplied).

There is no question but that the case at bar involved a concededly unfair labor practice – a strike over a jurisdictional dispute that was alleged in the complaint. If the aforementioned principles are to be given credence and weight, it cannot be said that the Florida Supreme Court erred in applying them to the case at bar.

There is also no question but that at first glance there would appear to be a conflict between this decision and the one arrived at by this Court in *Smith v. Evening News Association*, 371 US 195, 83 S.Ct. 267, 51 LRRM 2646.

An important distinction exists, however, in that *Evening News*, supra, was a §301 suit for damages, while the case at bar was strictly one for injunctive relief.

THE QUESTION OF INJUNCTIVE RELIEF

Respondent would submit that inextricably entwined in the case at bar, and the basis for the decision of the Florida Supreme Court, was the particular relief sought by the Petitioner herein.

The Florida Supreme Court had for some time been con-

cerned with the almost indiscriminate use of ex parte injunctions in labor disputes. Thus, in *Sheetmetal Workers*, supra, 230 So. 2d 154, 158, 159:

> "The use of ex parte injunctions does not help to resolve the uncertainty about the proper role of state courts in labor litigation, and does not serve the ends of Florida state policy. This is true even though economic pressure may be brought against a business by a union; economic pressure is sanctioned by federal legislation, and is therefore protected, ..."

Again, the Court held that initial determination of jurisdiction must be left to the National Labor Relations Board.

Although it cannot be said that the case at bar had its inception with an ex parte injunction, that *would* have been the case had not the trial court required telephone notice of the impending hearing to counsel for Respondent. (See Appendix, A-37, Order).

As noted above, this Court gave extensive attention to the Norris LaGuardia Act and its effect in both *Sinclair*, supra, and *Boys Markets*, supra. In *Boys Markets*, it was decided that injunctive relief, under very particular circumstances, should be available in labor disputes in spite of the clear wording of the Norris La Guardia Act, for the sound reason that a literal interpretation of the Act, without considering the remainder of Federal labor policy and laws, tended only to frustrate the national labor policy.

It follows, then, that the labor injunction is of national concern. The guidelines for the issuance of injunctive relief in labor relations cases should be uniform throughout the fifty states.

One method of assuring uniformity in the substantive labor law is to vest jurisdiction of disputes of this nature (injunctive relief from an unfair labor practice) within the Federal curtilage. Congress delineated and prohibited unfair labor practices. Congress determined that a national administrative agency should oversee such disputes, and gave that agency the power to effect decisive remedial action. This Court in *Boys Market*, supra, set down precise guidelines for the federal district courts to follow when confronted with a prayer for injunctive relief. This Court pointed out also in *Boys Markets*, supra, that suits of this type are removable to the federal courts if filed in state courts, and that it would be advantageous to the complained of party to have them removed. This Court pointed out in *Boys Markets*, supra, that many states have anti-injunction statutes applicable in labor dispute cases. Considering all of the foregoing, what sense is made, and what purpose served by, allowing the fifty states to proceed along their own lines in developing labor injunction law?

As this Court further pointed out in *Garmon*, supra, 359 US 236 at 242, 243, citing from *Garner*, supra:

> "Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes towards labor controversies. . . . . A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law."

Admittedly, *Boys Markets*, supra, dealt with the power of Federal district courts to issue injunctive relief, but the

injunction in labor law having the import that it does should make state injunctive relief in this area a federal concern.

THE EFFECT OF THE FLORIDA SUPREME COURT DECISION

The Petitioner has characterized the decision of the Florida Supreme Court as having practically demolished collective bargaining in Florida and as being an absolute insult to the national labor policy.

Respondent submits this is simply not the case. As has been pointed out above, this decision did not affect the status of the law in Florida – Florida courts had for years refused jurisdiction of cases that involved unfair labor practices within the National Labor Relation Board's jurisdiction. As a matter of fact, *Garmon*, supra, had made this the law of the United States.

The Florida Court did not, as is argued by the Petitioner, say that no-strike promises in collective bargaining agreements are unenforceable in the state courts. The Florida Supreme Court merely said that if an unfair labor practice is the complained of activity, and the relief requested is an injunction, the National Labor Relations Board should initially determine its jurisdiction. If the Board declines jurisdiction, the state courts would be free to act.

Petitioner completely forgets about the federal remedies afforded, even while citing *Boys Markets*, supra, under which injunctive relief is available in the District Courts. Furthermore, and just as importantly, the Board itself is empowered to prevent unfair labor practices. 29 USC §160 provides:

"(a) The Board is empowered, as hereinafter provided,

> to prevent any person from engaging in any unfair labor practice (listed in Section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise."

Indeed, under Section 10(j) of the Act, 29 USC §160, the Board is specifically empowered to obtain injunctions against those involved in unfair labor policies:

> "(j) The Board shall have power, upon issuance of a complaint as provided in Subsection (b) of this section charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred, or wherein such person resides or transacts business, for appropriate temporary relief or restraining order."

The National Labor Relations Board is one of the larger agencies of the United States, and was created by Congress for the specific purpose of enforcing the National Labor Relations Act.

There is no doubt but that the Board has both the jurisdiction and the machinery to prevent and curtail unfair labor practices. The Board has recently issued several decisions indicating that if the parties have contractually agreed to arbitrate certain matters, and the collective bargaining agreement contains binding arbitration procedures, the Board will voluntarily withhold its authority to adjudicate the dispute, despite the strong wording of §160(a) quoted above that "This power shall not be affected by any other means of

adjustment or prevention that has been or may be established by agreement, law, or otherwise" – despite the fact an unfair labor practice is involved.

Whether this line of decisions is correct or not, it speaks only to binding arbitration clauses–as did this Court's decision in *Boys Markets*, supra. There is no binding arbitration clause in the collective bargaining contract sued upon in the case at bar. This alone would distinguish this case from *Boys Markets*, supra, and the Board's decisions. As this Court pointed out in *Gateway Coal Co. v. Mine Workers*, 85 LRRM 2049 at 2051:

> "No obligation to arbitrate a labor dispute arises solely by operation of law. The law compels a party to submit his grievance to arbitration only if he has contracted to do so."

Garmon, supra, is good, sound logic. Congress has obviously acted in this area. Congress further set up an agency to insure that there would be uniformity in our national labor law. If injunctive relief is required, it may be had through the National Labor Relations Board through the Federal court system. There is no logical reason for insisting that the state court system should take initial jurisdiction of suits alleging an unfair labor practice, with the almost certain result of differing decisions.

Petitioners suggest that the Florida Supreme Court decision will have a devastating effect upon the construction industry, and that the no-strike promise has been "rendered meaningless and unenforceable in the Florida state courts." This is preposterous. Aside from the fact that unfair labor practices may be remedied in either proceedings by way of the National Labor Relations Board or through the Federal Courts,

many cases will arise that do not involve unfair labor practices, and these remain enforceable through state courts. There is also the specter of §301 damage suits for contract violations.

While "peaceful settlements" are of course more desirable than court action, not only in the field of labor relations, the fact remains that once the courts are called upon, the dispute has gone past the peaceful settlement stage. The record in this case is silent as to why the Respondents resorted to a strike. It is unclear whether the Petitioner was unwilling to follow any of the possible settlement provisions, or whether the Lathers' union was unwilling to follow the procedures, or whether the Respondents were. In any event, "peaceful settlement" became impossible, and legal action initiated. The only question remaining was what forum. It is submitted that the decision of the Florida court did no harm to, nor did it adversely effect, our national labor policy.

CONCLUSION

Respondents would suggest that the case at bar is sufficiently distinguished from *Smith v. Evening News*, supra, to justify application of the *Garmon*, supra, doctrine. If it is in conflict, perhaps it is *Smith*, supra, that should be reexamined, and not *Garmon*, supra. The rationale of *Boys Markets*, supra, dictates that labor injunctions should not be issued at random, and it is submitted this principle should be uniform nationally. It may be felt that the strictures of *Boys Markets* should be applied to the states -- if not the Norris La Guardia Act itself.

In the final analysis, however, this case boils down to the question of whether the Florida Supreme Court erred in its decision.

We cannot speculate on what the Court could or would do in similar but not identical situations. The Florida Court decided this particular case on particular facts. The holding is narrow, and it is submitted that what was decided was that (1) in a suit for injunctive relief, (2) from a strike that breaches a collective bargaining contract clause containing no binding arbitration procedure, (3) and that is concededly an unfair labor practice, (4) the state courts of Florida should defer initial jurisdiction until the National Labor Relations Board determines its jurisdiction.

The Petition for a Writ of Certiorari to the Florida Supreme Court should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the Brief of Respondent have been furnished to the following by United States First Class Mail, this 28th day of February, A.D. 1974:

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WILLIAM E. ARNOLD CO. *v.* CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY ET AL.

CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 73-466. Argued March 20, 1974—Decided May 20, 1974

When respondent unions called a jurisdictional-dispute strike against petitioner employer, petitioner brought this suit, which is within the purview of § 301 of the Labor Management Relations Act, in a Florida trial court to enjoin respondents' breach of a no-strike clause in the collective-bargaining agreement containing a binding settlement procedure. That court issued a temporary restraining order against the strike, and its action was upheld by an intermediate appellate court. The Florida Supreme Court reversed, holding that since the unions' breach was also arguably an unfair labor practice under § 8 (b) (4) (i) (D) of the National Labor Relations Act (NLRA) involving jurisdictional disputes, the jurisdiction of the National Labor Relations Board (NLRB) was exclusive. *Held:*

1. When the activity in question is arguably both an unfair labor practice prohibited by § 8 of the NLRA and a breach of a collective-bargaining agreement, the NLRB's authority "is not exclusive and does not destroy the jurisdiction of the courts in suits under § 301." *Smith* v. *Evening News Assn.*, 371 U. S. 195, 197. Pp. 15–18.

(a) The pre-emption doctrine of *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236, is "not relevant" to actions within the purview of § 301, which may be brought in either state or federal courts. P. 16.

(b) NLRB policy is to refrain from exercising jurisdiction as to conduct which is arguably both an unfair labor practice and a contract violation when, as here, the parties have voluntarily established by contract a binding settlement procedure. P. 16.

(c) When the particular contract violations also involve an arguable violation of § 8 (b) (4) (i) (D), the NLRB has recognized added policy justifications for deferring to the contractual dispute settlement mechanism, as indicated by § 10 (k) of the NLRA, which by its special procedure for NLRB resolution of charges

involving jurisdictional disputes "not only tolerates but actually encourages" settlements of such disputes. Pp. 17–18.

2. State court jurisdiction over collective-bargaining disputes does not turn upon the particular type of relief sought, and therefore is not limited to claims for damages, rather than injunctive relief. Pp. 18–20.

279 So. 2d 300, reversed and remanded.

BRENNAN, J., delivered the opinion for a unanimous Court.

John Paul Jones argued the cause for petitioner. With him on the brief were *Daniel R. Coffman, Jr.*, and *Allan P. Clark.*

Joseph S. Farley, Jr., argued the cause and filed a brief for respondents.*

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The Florida Supreme Court held that the Florida District Court of Appeal erred in refusing to issue a writ of prohibition to restrain the Circuit Court for Duval County from exercising its jurisdiction over a suit within the purview of § 301 of the Labor Management Relations Act (LMRA).[1] The suit sought to enjoin respondent unions' breach of a no-strike clause contained in a

*Briefs of *amici curiae* urging reversal were filed by *Solicitor General Bork, Peter G. Nash, John S. Irving, Patrick Hardin,* and *Norton J. Come* for the United States, and by *Gerard C. Smetana, Jerry Kronenberg,* and *Milton Smith* for the Chamber of Commerce of the United States.

[1] "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 61 Stat. 156, 29 U. S. C. § 185 (a).

collective-bargaining agreement, which breach arguably is also an unfair labor practice under the Act. The State Supreme Court stated: "It is unquestionable that state courts do have jurisdiction to enforce a collective-bargaining agreement and to enjoin a strike in violation of a 'no-strike' clause contained therein, but not when the strike is also arguably an unfair labor practice prohibited by federal law." 279 So. 2d 300, 302 (1973). We granted certiorari to decide whether the holding of the Florida Supreme Court was consistent with decisions of this Court, including *Teamsters Local* v. *Lucas Flour Co.*, 369 U. S. 95 (1962), and *Smith* v. *Evening News Assn.*, 371 U. S. 195 (1962). 414 U. S. 1063 (1973). We reverse.

Article VI of a collective-bargaining agreement between petitioner, William E. Arnold Co., and respondents, Carpenters District Council of Jacksonville and Vicinity and its affiliate, Local 627 (Carpenters), provides:

> "There shall be no work stoppage, slowdown, work cessation or strike because of a Jurisdictional Dispute. A mutually agreeable settlement, or joint decision of the International Unions involved, or decision or interpretation of the National Joint Board for the Settlement of Jurisdictional Disputes (or Hearing Panel) shall be binding and all parties agree to accept such decision or interpretation."

In 1971, during the construction of the Jacksonville General Hospital, one of Arnold's subcontractors assigned work claimed by the Carpenters to the Wood, Wire and Metal Lathers International Union, AFL–CIO, Local 59. The Carpenters struck Arnold to force reassignment of the work to their members. Arnold thereupon brought this suit in the Circuit Court of Duval County to enjoin the Carpenters from violating the provisions of

Art. VI and obtained a temporary restraining order prohibiting the strike. The Carpenters then sought a writ of prohibition from a Florida District Court of Appeal, contending that the Circuit Court lacked jurisdiction to order injunctive relief because the alleged breach of the no-strike clause was also arguably an unfair labor practice under § 8 (b)(4)(i)(D) of the National Labor Relations Act (NLRA), 29 U. S. C. § 158 (b)(4)(i)(D),[2] and therefore fell within the exclusive jurisdiction of the National Labor Relations Board (Board). The District Court of Appeal denied the writ of prohibition and, as previously mentioned, the Supreme Court of Florida reversed.

When an activity is either arguably protected by § 7 or arguably prohibited by § 8 of the NLRA, the preemption doctrine developed in *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236 (1959), and its progeny, teaches that ordinarily "the States as well as the federal courts must defer to the exclusive competence

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[2] Section 8 (b)(4) makes it an unfair labor practice for a labor organization or its agents:

"(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise, handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

. . . .

"(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work . . . ."

of the National Labor Relations Board if the danger of state interference with national policy is to be averted." *Id.*, at 245. When, however, the activity in question also constitutes a breach of a collective-bargaining agreement, the Board's authority "is not exclusive and does not destroy the jurisdiction of the courts in suits under § 301." *Smith* v. *Evening News Assn.*, 371 U. S., at 197. This exception was explicitly reaffirmed in *Motor Coach Employees* v. *Lockridge*, 403 U. S. 274, 297–298 (1971). It was fashioned because the history of § 301 reveals that "Congress deliberately chose to leave the enforcement of collective agreements 'to the usual processes of the law,'" *Dowd Box Co.* v. *Courtney*, 368 U. S. 502, 513 (1962). Thus, we have said that the *Garmon* doctrine is "not relevant" to actions within the purview of § 301, *Teamsters Local* v. *Lucas Flour Co.*, 369 U. S., at 101 n. 9, which may be brought in either state or federal courts, *Dowd Box Co.* v. *Courtney*, *supra*, at 506.

Indeed, Board policy is to refrain from exercising jurisdiction in respect of disputed conduct arguably both an unfair labor practice and a contract violation when, as in this case, the parties have voluntarily established by contract a binding settlement procedure. See, *e. g.*, *The Associated Press*, 199 N. L. R. B. No. 168 (1972); *Eastman Broadcasting Co.*, 199 N. L. R. B. No. 58 (1972); *Laborers Local 423*, 199 N. L. R. B. No. 48 (1972); *Collyer Insulated Wire*, 192 N. L. R. B. 837 (1971). The Board said in *Collyer*, "an industrial relations dispute may involve conduct which, at least arguably, may contravene both the collective agreement and our statute. When the parties have contractually committed themselves to mutually agreeable procedures for resolving their disputes during the period of the contract, we are of the view that those procedures should be afforded full opportunity to

function. . . . We believe it to be consistent with the fundamental objectives of Federal law to require the parties . . . to honor their contractual obligations rather than, by casting [their] dispute in statutory terms, to ignore their agreed-upon procedures." *Id.*, at 842–843. The Board's position harmonizes with Congress' articulated concern that, "[f]inal adjustment by a method agreed upon by the parties is . . . the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. . . ." § 203 (d) of the LMRA, 29 U. S. C. § 173 (d).

Furthermore, when the particular contract violation also involves an arguable violation of § 8 (b)(4)(i)(D) of the NLRA concerning jurisdictional disputes, as in this case, the Board has recognized added policy justifications for deferring to the contractual dispute settlement mechanism agreed upon by the parties. Section 10 (k) of the NLRA, 29 U. S. C. § 160 (k), establishes a special procedure for the Board's resolution of charges involving jurisdictional disputes:

> "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 158 (b) of this title, the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, *unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.*" (Emphasis added.)

Thus, § 10 (k), "not only tolerates but actively encourages voluntary settlements of work assignment controversies between unions . . . ." *Carey* v. *Westinghouse Electric Corp.*, 375 U. S. 261, 266 (1964). Recognizing Congress' preference for voluntary settlement of jurisdictional disputes, the Board has declined jurisdiction in § 10 (k) cases, commenting that, "[i]f we retained jurisdiction . . . , the statutory purpose to encourage the voluntary settlement of jurisdictional disputes would be frustrated in that a party receiving an adverse decision from the agreed-upon tribunal for settling its jurisdictional dispute would be encouraged to ignore such decision, lapse into noncompliance, and then come before this Board for a more favorable resolution of the dispute." *Laborers Local 423*, 199 N. L. R. B., at ——.

The Board's practice and policy of declining to exercise its concurrent jurisdiction over arguably unfair labor practices which also violate provisions of collective-bargaining agreements for voluntary adjustment of disputes, highlight the congressional purpose that § 301 suits in state and federal courts should be the primary means for "promoting collective bargaining that [ends] with agreements not to strike." *Textile Workers* v. *Lincoln Mills*, 353 U. S. 448, 453 (1957). The assurance of swift and effective judicial relief provides incentive to eschew economic weapons in favor of binding grievance procedures and no-strike clauses.

The Carpenters contend, however, that state court jurisdiction over collective-bargaining disputes should be limited to claims for damages, rather than injunctive relief. See Brief for Respondents 7–9. We disagree. To be sure, *Lucas*, *Smith*, and *Lockridge*, all *supra*, involved only damages claims, but nothing in the opinions in those cases remotely suggests that state court jurisdiction should turn upon the particular type of relief sought.

Indeed, *Avco Corp.* v. *Aero Lodge 735*, 390 U. S. 557, 561 (1968), disposes of the argument. We there said, "The nature of the relief available after jurisdiction attaches is, of course, different from the question whether there is jurisdiction to adjudicate the controversy. . . . Any error in granting or designing relief 'does not go to the jurisdiction of the court.' *Swift & Co.* v. *United States*, 276 U. S. 311, 331." Moreover, the policy reasons against extension of the *Garmon* doctrine to suits within the scope of § 301 are particularly compelling when the relief sought is specific performance of a no-strike obligation, rather than damages. What we said in *Boys Markets* v. *Clerks Union*, 398 U. S. 235, 248 (1970), is pertinent here:

> "[A] no-strike obligation, express or implied, is the *quid pro quo* for an undertaking by the employer to submit grievance disputes to the process of arbitration. See *Textile Workers Union* v. *Lincoln Mills*, *supra*, at 455. Any incentive for employers to enter into such an arrangement is necessarily dissipated if the principal and most expeditious method by which the no-strike obligation can be enforced is eliminated. While it is of course true, as respondent contends, that other avenues of redress, such as an action for damages, would remain open to an aggrieved employer, an award of damages after a dispute has been settled is no substitute for an immediate halt to an illegal strike. Furthermore, an action for damages prosecuted during or after a labor dispute would only tend to aggravate industrial strife and delay an early resolution of the difficulties between employer and union." (Footnotes omitted.)

See also *Gateway Coal Co.* v. *United Mine Workers*, 414 U. S. 368, 382 (1973).

Therefore, we reject the argument of Carpenters that the availability of effective equitable relief should be limited to the federal courts. We have previously expressed our agreement with Chief Justice Traynor of the California Supreme Court that "whether or not Congress could deprive state courts of the power to give such [injunctive] remedies when enforcing collective-bargaining agreements, it has not attempted to do so either in the Norris-La Guardia Act or section 301," *McCarroll* v. *Los Angeles County Dist. Council of Carpenters*, 49 Cal. 2d 45, 63, 315 P. 2d 322, 332 (1957). See *Boys Markets* v. *Clerks Union*, *supra*, at 247. Rather, the jurisdiction given federal courts under § 301 was "not to displace, but to supplement, the thoroughly considered jurisdiction of the courts of the various States over contracts made by labor organizations," *Dowd Box Co.* v. *Courtney*, 368 U. S., at 511.

We do not, of course, pass upon the propriety of the injunctive relief sought in the present case. That is a question to be resolved on remand. The judgment of the Supreme Court of Florida is reversed and the case remanded for further proceedings not inconsistent with this opinion.

It is so ordered.